159 U.S. 417

RECORD, CASE No. 14,554.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~694~~. ~~423~~ 414 16

HYMAN SONN AND HERMANN SONN, PARTNERS AS SONN BROTHERS, PLAINTIFFS IN ERROR,

vs.

DANIEL MAGONE, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 31, 1891.

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INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	1
Summons	3	2
Certiorari	5	2
Complaint	7	3
Bill of particulars	9	5
Answer	11	6
Minutes of trial	13	7
Judgment	15	8
Consent as to bill of exceptions	17	8
Bill of exceptions	18	8
Evidence for plaintiffs	18	9
Testimony of Hyman Sonn	19	9
John Wakeman	34	20
Jaroslav Hussa	45	27
Frederick W. Brooks	46	27
Walter Carr	46	27
Alfred Roelker	61	37

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	Original.	Print.
Evidence for defendant	63	39
Testimony of Edwin B. Dusenberry	63	39
Frederick W. Bruggerhof	66	41
Alexander Forbes	71	45
Decision of Treasury Department, May 11, 1866	75	48
April 6, 1868	76	48
June 1, 1885	76	48
December 9, 1886	77	49
January 22, 1887	78	49
March 23, 1887	78	50
Evidence for plaintiffs	80	52
Decision of Treasury Department, November 27, 1883	81	52
March 28, 1884	81	53
October 21, 1884	84	55
Evidence for defendant	85	56
Definitions from Webster's Dictionary	86	56
Defendant's motion for direction of verdict	87	57
Ruling on motion	88	58
Plaintiffs' prayers for instructions	89	58
Judge's certificate	95	61
Bond	97	62
Order allowing deposit of amount of costs in the registry of the court, to operate as a supersedeas	99	63
Stipulation that plaintiffs deposit amount of costs in the registry of the court, to operate as a supersedeas	100	63
Consent and order to file bill of exceptions *nunc pro tunc*	102	64
Assignment of errors	103	64
Joinder in error	105	65
Citation	107	65
Proof of service of citation	108	66

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Hyman Sonn and Hermann Sonn, doing business under the firm name of Sonn Brothers, plaintiffs, and Daniel Magone, collector of the port of New York, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as is said and appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the thirty-first day of March, 1891, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3d day of March, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
E. HENRY LACOMBE.

2 [Endorsed:] E. & A. A. 969. N. S. 12773. Supreme Court of the United States. Hyman Sonn and Hermann Sonn, plaintiffs in error, *vs.* Daniel Magone, defendant in error. Writ of error. Nordlinger & Rapp, attorneys for plaintiffs in error, 167 Broadway, New York. Due service of a copy of the within writ of error is hereby admitted this 3rd day of March, 1891. Edward Mitchell, attorney for defendant in error.

[Stamped:] U. S. circuit court. Filed Mar. 3, 1891. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 3 to 108, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Hyman Sonn and Hermann Sonn, plaintiffs in error, against Daniel Magone, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this thirtieth day of March, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 Superior Court of the City of New York.

HYMAN SONN and HERMANN SONN, Plaintiffs,
against
DANIEL MAGONE, Collector of the Port of New York, Defendant. } Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, August 1st, 1888.

NORDLINGER & RAPP,
Plaintiffs' Attorneys; Offices, No. 167 Broadway, New York City.

4 [Endorsed:] N. S. 12773. N. Y. superior court. Hyman Sonn *et al. vs.* Daniel Magone. Summons. Nordlinger & Rapp, plaintiffs' attorneys, 167 Broadway, New York. Received, U. S. attorney's office, Aug. 4, 1888. Personally served Aug. 7, 1888, custom-house, New York.

5 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Daniel Magone, defendant, by Hyman Sonn *et al.*, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly

[L. S.]

send to the said circuit court, at the city of New York, on the 24 day of Aug., 1888, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Hon. Samuel F. Miller, senior associate justice of the Supreme Court of the United States, the 16 day of Aug., in the year one thousand eight hundred and eighty-eight.

JOHN A. SHIELDS, *Clerk.*

STEPHEN A. WALKER,
United States Attorney, Attorney for Defendant.

6 [Endorsed:] 12773. U. S. circuit court. Hyman Sonn *et al. vs.* Daniel Magone. Copy certiorari. Stephen A. Walker, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Aug. 16, 1888. Yours, Stephen A. Walker, U. S. attorney, attorney for defendant. To N. & R., plaintiffs' attorney-. Due service of a copy of the within and of the above notice is hereby admitted. New York, Aug. 16, 1888. Nordlinger & Rapp, plaintiffs' attorney-.

7 United States Circuit Court, Southern District of New York.

HYMAN SONN and HERMANN SONN, Plaintiffs,
against
DANIEL MAGONE, Collector of the Port of New York, Defendant. } No. 12773.

The above-named plaintiffs for complaint in this action state:

I. That the defendant, during the times hereinafter mentioned, was collector of the customs of the United States at the port of New York, and that the plaintiffs during said times were copartners in trade, doing business in New York and elsewhere under the firm name of Sonn Bros., and in said business imported and entered at the port of New York certain merchandise at the times and by the vessels specified in the plaintiffs' bill of particulars, which is hereby made part of this complaint.

II. That the defendant as such collector exacted from plaintiffs as and for duties on said merchandise the sums specified in said bill of particulars, to wit, the sum of seven hundred and seventy-two $\frac{80}{100}$ dollars, in excess of the amount required by law, and which said excessive sum the plaintiffs, on or about the dates specified in the said bill of particulars and in order to obtain possession of said goods, were compelled to pay and did pay to the defendant.

8 III. That plaintiffs filed with the said defendant due and timely protests in writing upon each and every entry of said goods against the decision exacting said duties, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

IV. That plaintiffs have made due and timely appeal in each case to the Secretary of the Treasury, whose decision on each appeal

has either been rendered within ninety days previous to the beginning of this suit or has been delayed more than ninety days from the date of such appeal on each and — entry.

V. That the said bill of particulars states for each importation separately the date of entry at the custom-house, the precise amount of duty said to have been exacted in excess, the date of payment of said duty, and the filing of said protests, of the appeals to the Secretary of the Treasury and his decision- thereon, if any, together with the other particulars required by law.

VI. That the sums so exacted as aforesaid have not been repaid to the plaintiffs and are still due and owing to them.

Wherefore plaintiffs demand judgment against the defendant for the sum of seven hundred and seventy-two $\frac{80}{100}$ dollars, with interest thereon from the several dates of payment as they appear on said bill of particulars, together with the costs and disbursements of this action.

NORDLINGER & RAPP,
Plaintiffs' Attorneys, 167 B'way, N. Y.

9 *Bill of Particulars of Merchandise Imported by Sonn Brothers.*

Description of merchandise.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
Lentils	Hamburg	Bohemia	Oct. 10, 1887	Oct. 29, 1887	Oct. 31, 1887	49 40	Mch. 20, 1888	Mch. 20, 1888	May 3, 1888.
Beans	Antwerp	Vaderland	Oct. 26, 1887	Nov. 14, 1887	Nov. 15, 1887	181 20	April 12, 1888	April 12, 1888	July 25, 1888.
Beans	Antwerp	Pennland	Oct. 22, 1887	Nov. 7, 1887	Nov. 8, 1887	90 90	April 12, 1888	April 12, 1888	July 25, 1888.
Beans	Antwerp	Noordland	Dec. 23, 1887	Jan. 5, 1888	Jan. 5, 1888	221 70	April 25, 1888	Ap'l 25, 1888	June 4, 1888.
Beans	Leghorn	Alsatia	Jan. 28, 1888	Mch. 10, 1888	Mch. 10, 1888	33 70	May 21, 1888	May 21, 1888	
Beans	Antwerp	Westernland	Nov. 23, 1887	Dec. 8, 1887	Dec. 9, 1887	195 90	May 21, 1888	May 21, 1888	July 5, 1888.

Plaintiffs' bill of particulars referred to in annexed complaint.

NORDLINGER & RAPP, *Pl'ffs' Att'ys.*

10 [Endorsed:] No. 12773. U. S. circuit court. Hyman Sonn *et al.*, plaintiffs, against Daniel Magone, defendant. Complaint & bill of particulars. Nordlinger & Rapp, attorneys for pl'ff., 167 Broadway, New York city. To Stephen A. Walker, Esq., attorney for def't. Received, U. S. attorney's office, Sep. 11, 1888.

11 Circuit Court of the United States for the Southern District of New York.

HYMAN SONN *et al.*
versus
DANIEL MAGONE, Collector, etc. } N. S. 12773.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint, and he denies that the plaintiffs were compelled to pay or did pay to the defendant, as collector or otherwise, the sum stated in the complaint, or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise, or that the same was paid in order to obtain possession of said goods.

II. He denies that the plaintiffs filed with the defendant any protest or protests, as required by section 3011 of the Revised Statutes of the United States.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiffs.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the time therein mentioned were in fact such goods as are described in the said complaint.

V. And, further answering, he alleges that no protest was filed within ten days after the ascertainment and liquidation of the duties thereon.

VI. And, further answering, he alleges that no appeal was taken to the Secretary of the Treasury within thirty days after the date of the ascertainment and liquidation of duties thereon.

VII. And, further answering, he alleges that this action was not brought within ninety days after the decision of the Secretary of the Treasury on the appeal taken from the ascertainment and liquidation of duties thereon, or within ninety days after payment of duties paid thereon after such decision.

VIII. And, further answering, he alleges that this action was brought without the decision of the Secretary of the Treasury on the appeal from the ascertainment and liquidation of duties thereon having been first had and without ninety days having elapsed from the date of such appeal.

IX. And, further answering, the defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were demanded of the plaintiffs and were by the plaintiffs voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith, before the commencement of this action and before the receipt by defendant of any protest or objection on the part of the plaintiffs, paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

X. And, further answering, the defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were sums due from the plaintiffs to the United States as duties, according to the rate of duty imposed by law, upon articles of merchandise imported by plaintiffs and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' entry thereof were collected or received by defendant from the plaintiffs.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney, Attorney for the Defendant.

12 [Endorsed:] 12773. U. S. circuit court, southern district of New York. Hyman Sonn *et al. vs.* Daniel Magone, collector, etc. Copy. Answer. Stephen A. Walker, United States attorney, attorney for defendant. Sirs: Please to take notice that the within is a copy of an answer this day filed in the office of the clerk of the circuit court of the United States for the southern district of New York. Dated New York, December 14th, 1888. Yours, &c., Stephen A. Walker, U. S. att'y & att'y for def't. To Nordlinger & Rapp, Esqs., attorneys for plaintiffs. Due service of a copy of an answer of which the within is a copy and of the above notice is hereby admitted. Dated New York, December 14th, 1888. Nordlinger & Rapp, attorneys for plaintiff.

13 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the 14th day of January, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable E. Henry Lacombe, circuit judge.

HYMAN SONN *et al.*
vs.
DANIEL MAGONE. } N. S. 12773.

Now come the plaintiffs, by Henry E. Tremaine, Esq., their attorney, and move the trial of this cause.

Likewise comes the defendant by Henry C. Platt, Esq., assistant United States attorney, his attorney.

Thereupon a jury is empanelled and the cause proceeds to trial.

After hearing the evidence of the respective parties and the argument of counsel, the jury, on 15th inst., by direction of the court, say that they find a verdict for the defendant, and so they say all.

On motion of Henry E. Tremaine, Esq., ordered that the plaintiffs have a stay of sixty days in which to make and serve a case,
14 with leave to turn the same into a bill of exceptions.

An abstract of the minutes.

[L. S.] JOHN A. SHIELDS, *Clerk.*

15 United States Circuit Court, Southern District of New York.

HYMAN SONN *et al.*
vs.
DANIEL MAGONE. } Judgment. March 3rd, 1891.

The issues in this action having been brought on for trial before Mr. Judge Lacombe and a jury at a circuit court of the October term, 1890, and the issues having been tried and a verdict for the defendant having been duly rendered on the 15th day of Jan'y, 1891, and his costs having been adjusted at $54.85, now, on motion of Edward Mitchell, United States attorney, for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $54.85, his taxed costs, and have execution therefor.

Judgment signed this 3rd day of March, 1891.

JOHN A. SHIELDS, *Clerk.*

16 [Endorsed:] 12773. United States circuit court. Hyman Sonn *et al. vs.* Daniel Magone. Judgment-roll. Edward Mitchell, United States attorney, attorney for defendant. Filed ——, 188–. Costs, $—. U. S. circuit court. Filed Mar. 3, 1891, 3.40 p. m. John A. Shields, clerk.

17 United States Circuit Court, Southern District of New York.

HYMAN SONN and HERMANN SONN
ag'st
DANIEL MAGONE, Collector, &c. } 12773.

The annexed is the bill of plaintiffs' exceptions in the action entitled above as agreed upon and settled between the parties.

Dated New York, March 24, 1891.

Bill presented in behalf of plaintiffs' att'ys.

EDW'D MITCHELL,
Att'y for Defendant.

18 United States Circuit Court, Southern District of New York.

HYMAN SONN and HERMANN SONN
vs.
DANIEL MAGONE, Collector of the Port of New York. } No. 12773.

Bill of Exceptions.

And afterwards, to wit, on the 14th day of January, 1891, this case come on to be tried before the Honorable E. Henry Lacombe, circuit judge of the United States for the southern district of New York, and a jury duly empanneled and sworn to try the issues herein.

The parties appeared by their counsel, Mr. Henry E. Tremaine for the plaintiffs and Mr. Henry C. Platt and Mr. Thomas Greenwood, assistant U. S. district attorneys, for the defendant, and dur-

ing the course of the trial and before the rendering of the verdict therein, the counsel for the plaintiffs did take and allege certain exceptions to certain rulings of the court, which said exceptions were by the court duly allowed and are hereinafter specifically set forth.

To sustain the issues on their part the plaintiffs introduced evidence tending to show that in October, 1887, by the steamer Bohemia; in November, 1887, by the steamer Vaderland; in November, 1887, by the steamer Pennland; in January, 1888, by the steamer
19 Noordland; in March, 1888, by the steamer Alsatia, and in December, 1887, by the steamer Westernland, they imported certain merchandise, upon which they were charged a duty at the rate of ten per centum ad valorem by the defendant, then the collector of customs at the port of New York, and paid the same under protest, and thereafter appealed to the Secretary of the Treasury and seasonably instituted suit in accordance with the statutes.

The plaintiff, HYMAN SONN, being examined in his own behalf, gave evidence tending to show as follows: I am one of the plaintiffs; the other plaintiff is my partner, the firm being Sonn Brothers; that firm made some importations in 1887 on the Bohemia, by entry dated October 29, 1887; by the Vaderland November 14, 1887; by the Pennland November 7, 1887; by the Noordland January 5, 1888; by the Alsatia March 10, 1888, and by the Westernland December 8, 1887. We paid ten per cent. duty. We caused protests to be made and were obliged to pay at that rate in order to get our goods.

Q. Will you please state what those six importations were?

A. They were the field seeds of lentils and the field seeds of beans. The duty was assessed on them all at the same rate. I have seen these field lentils and these field beans grow, both in this State and also in the West. These articles came from Europe, in Germany, in Holland, and in different parts of Germany. These are all our entries and these are the invoices upon which the entries were made (producing and identifying same). They cover no other goods except the goods I have just mentioned.

PLAINTIFFS' COUNSEL: The protest by the Bohemia on the
20 entry of October 29, 1887; the protest by the Westernland of December 8, 1887, and by the Alsatia of March 10, 1888, are offered in evidence. These protests claim that the merchandise imported and involved in this action was exempt from duty under that clause of the free list reading: * * * "and seeds of all kinds, except medicinal seeds, not specially enumerated or provided for in this act." (Par. 760 of the free list.)

Q. Can you produce a sample of these identical importations, or samples similar thereto?

A. I can produce samples similar thereto. I cannot state whether they are positively of the identical importations, but they are very similar. (Referring to two bags:) these are similar to the goods imported. (The two bags of samples are marked Exhibits 3 and 4 for identification.) Sample No. 3 represents the seeds of the lentils, and sample No. 4 represents the seeds of the field bean.

Q. Can you say whether all the importations were of the same variety, or of different varieties or not?

A. They were all of the same variety.

PLAINTIFFS' COUNSEL: Now I offer those samples in evidence.

Defendant's Counsel:

Q. How many different varieties did you import?

A. They are about the same variety. There is a little difference in the quality, but the variety is all the same; the common field bean.

Q. And the ordinary lentils?

A. The ordinary seed of the lentil, and the seed of the bean.

Q. I know what you call "seed," but I ask is that the ordinary lentil—that which is called in trade "lentil"? That is what you mean? You mean the ordinary lentil in trade?

A. The whole lentil comes as a vegetable, and these are
21 the seeds.

Q. I am not asking you about that. I want to know whether there is more than one variety of lentil that you import.

A. No; they are all one variety. (The samples marked Exhibits 3 and 4 for identification are received in evidence.)

By Plaintiffs' Counsel:

Q. You say that there are different qualities. State what you mean.

A. Some beans are larger, and some are the seed of the pea bean, and others are the seed of the large marrow bean, and then there are the seed of the medium bean. That is all the difference there is.

Q. Each are distinguished how?

A. By commercial usage, that is all.

By the Court:

Q. I understood you to say that there was no difference in its varieties. Now do I understand you to say that there are differences established in commercial usage?

A. As to the quality there is. They are all the same variety and all grow in the same way.

By Plaintiffs' Counsel:

Q. Will you state, in respect to these differences which you do mention, whether they affect the commercial value and price, or not?

A. Yes; they are of different prices.

Q. The different kinds are?

A. Yes.

Q. Do they have different specific names?

A. They have different specific names.

Q. But they belong, you say, to the same general variety?

A. To the same general variety.

Q. How is it with lentils?

A. Lentils are more of a single variety; there is not so much difference in lentils as there is in the other.

Q. Do you know from your commercial experience that there is a lesser variety of the lentil seeds that are staples of commercial dealing than there are of the bean seeds?

A. Yes, sir.

Q. Can you state whether these are all or are not all of
22 the different qualities of this class of articles?

A. They are not all the different classes; not all.

Q. There are others?

A. There are others.

Q. Will you please state some of the distinctions, if any, between the qualities in these invoices?

A. There is seed of the pea bean, which is a small bean; and then there is the seed of the white kidney bean, that is an oblong, long bean; and the seed of the marrow bean, which is a long, round bean; and the seed of the medium bean, which is a medium-sized bean, and there are also different colored beans.

Q. In these invoices?

A. Not in these invoices.

Q. I am talking about these invoices.

The COURT: What varieties of qualities are there in these invoices in this suit?

Q. Different values?

A. Different values.

Q. And different names?

A. I cannot state that without looking at the invoices. I can tell by looking at the invoices.

Q. You mean the invoices which you have just identified?

A. These that I have just identified.

Q. Now I ask you to look at those invoices, refresh your recollection, and see if you can tell us.

The WITNESS (after looking at the invoices): There are only two qualities represented by these invoices. They are all of the same variety as the sample.

Q. Having two different names?

A. No; the names on those are about the same. They might be distinguished a little differently, but they are the same variety, a slight difference in price, that is all.

Q. What did you say your business was?

A. Wholesale grocers.

Q. Do you deal in vegetables?

A. We do not, only in their tanned or prepared condition.

Q. Is that condition represented by the samples which are now shown you?

23 The COURT: In the state represented by samples now marked 5, 6, and 7 for identification.

Q. In that state do you deal in them; in tin as well as in glass?
A. We do.
Q. And in more than one species of vegetable?
A. Yes.
Q. Does each species have its own name?
A. Each species has its own name.
Q. Do these samples, 5, 6, and 7, have names?
A. They have.
Q. Are they a species of vegetable?

DEFENDANT'S COUNSEL: We object to that.

The COURT: Is not that a question for the jury—whether they are vegetables or seeds? That is what the jury are to say.

DEFENDANT'S COUNSEL: I object to it both as incompetent and immaterial—whether these green things are vegetables. These are not in suit.

The COURT: I will sustain the objection to that question.

To this ruling plaintiffs' counsel duly excepted.

PLAINTIFFS' COUNSEL: I offer the samples in evidence. I propose to connect them by the testimony of other witnesses. (The samples already marked Exhibits 5, 6, and 7 for identification, and now are marked in evidence.)

Q. Do you know what the articles are which are commercially known as vegetables, either in the prepared state or in the natural state?
A. I do.
Q. Could you say that there are many varieties or only one variety of that class?

The COURT: What class?

PLAINTIFFS' COUNSEL: Vegetables.

DEFENDANT'S COUNSEL: That is immaterial.

The COURT: I am inclined to sustain the objection upon some other ground. What upon earth is the necessity of the witness on the stand telling the jury and the court that there is more
24 than one kind of vegetable. It is a part of the common knowledge which we all possess.

To this ruling plaintiffs 'counsel duly excepted.

The COURT: I exclude — on the ground that the court and jury are aware of the fact that there is a great many varieties of vegetables.

Exception noted.

Q. Are there a large number of varieties of vegetables which are staples in trade and commerce and of importation?
A. There are.
Q. Have you seen such commodities in their natural state?
A. I have.
Q. And also in their prepared state?
A. Yes.
Q. I show you some commodities which for convenience I will have marked "8 for identification," and I ask you whether that samples

does or does not represent a commodity of vegetable in its natural state?

DEFENDANT'S COUNSEL: Objected to as immaterial.

The COURT: Are you asking him of a commodity dealt in in trade?

PLAINTIFFS' COUNSEL: Yes.

DEFENDANT'S COUNSEL: I object to that as immaterial. There is no such thing as that in suit.

The COURT: The objection is overruled. I am only allowing the question as to trade and commerce. I understand you to so qualify it.

PLAINTIFFS' COUNSEL: Yes.

A. Yes; this is the natural bean.

Q. And it is an article of trade and commerce?

A. Yes.

Q. Is it or is it not known as a vegetable?

DEFENDANT'S COUNSEL: That is objected to as immaterial.

The COURT: Known as a vegetable—where?

PLAINTIFFS' COUNSEL: In trade and commerce.

The COURT: Do you mean bought and sold as a vegetable in trade and commerce?

25 PLAINTIFFS' COUNSEL: No, sir; it is not proper to say.

The COURT: Then I shall exclude the question.

PLAINTIFFS' COUNSEL: Your honor is arriving at a conclusion which may or may not follow from the testimony, because it is not proper to say that an article bought and sold under a name which in common sense belongs to a class, but an article bought and sold according to such commercial designation or description as will identify that individual commodity for the purpose of dealing in it. Now, to say that "vegetable" identifies anything—that is not what I mean.

The COURT: I understand the Supreme Court to have held in the square-yard cases that mere classification without nomenclature is immaterial, and on that ground I am inclined to sustain the objection.

PLAINTIFFS' COUNSEL: I do not know that individual classification is very material; but we are talking about a class, and the commercial usages with respect to that class have never been held in any case that I have ever heard of to be material, and I did not intend my question to go beyond that.

Q. (Read:) "Is it not known as a vegetable?"

The COURT: The form of the question is objectionable.

PLAINTIFFS' COUNSEL: I will take the benefit of an exception to that ruling, although the question is perhaps objectionable.

Q. I wish to know whether the article marked sample 8 in trade and commerce is one of the articles which are dealt in under the commercial class of "vegetables."

DEFENDANT'S COUNSEL: Objected to as immaterial.

The COURT: The objection is sustained in that form of
26 question.

To this ruling plaintiffs' counsel duly excepted.

Q. Do you know what are the commodities which in commercial usage are termed "vegetables"?
A. I do.
Q. Does sample 8 belong to that class?
A. It belongs to that class.
Q. Do samples 3 and 4 belong to that class?
A. They do not.

Cross-examination by defendant's counsel:

The samples of the article shown me by my counsel are not samples of all the vegetables known in 1883.
Q. What do you import?
A. We import quite a number of things—the seeds of the lentil and the seeds of the bean, and prunes, prunelles, canary seed, hemp seed, rape seed, and quite a variety of articles.
Q. Do you import any seed of the wheat plant?
A. We do not.
Q. Do you import seed of the rye plant?
A. We do not.
Q. Or the seed of the oat plant?
A. We do not.
Q. I understood you to say that there are only two qualities of beans mentioned in the invoices in suit. Is that correct?
A. That is correct.
Q. In a prior question I understood you to mention from memory, as comprised in the invoices in this suit, five or six different varieties?
A. I said there were five different qualities.

The COURT: I think the witness misunderstood that question.

Q. Are you a dealer in provisions generally?
A. No; not in provisions generally.
Q. You are a wholesale grocer?
A. We are wholesale grocers, importers, and commission merchants.
Q. What quantity of beans do you import?
A. At different times, different quantities.
Q. Give us some idea of the quantity.
27 A. Sometimes 100 bags at a time; sometimes 500 bags at a time.
Q. To whom do you dispose of them?
A. To different people all over the country; from Maine to California.
Q. How are these goods invoiced to you?
A. They are invoiced as "hand-picked beans."
Q. How are they entered?
A. I think they are entered in the same way. They have to be entered in the same way.

Q. The entries are made by your firm?
A. Yes.
Q. "60 bags of beans." Does that describe these articles?
A. That describes the articles in a general way. We are compelled to enter them the same as they are invoiced.

DEFENDANT'S COUNSEL: I move to strike the last answer out as irresponsive to any question.
The COURT: The motion is granted. The answer is irresponsive.
PLAINTIFFS' COUNSEL: We take an exception.
The COURT: You may ask that on redirect examination. I am only ruling it out as irresponsive.
PLAINTIFFS' COUNSEL: Your honor will reserve us the benefit of an exception.
The COURT: Certainly; but I call your attention to that fact so that you may not rely solely upon an exception, but take the testimony if you wish.

Q. Is that your signature to the oath to that entry?
A. It is.
Q. Is that oath true?
A. Yes.

DEFENDANT'S COUNSEL: This is the entry by the Alsatia. It had better be marked for identification. (Said entry is marked "A for identification.")

Q. So that these goods were invoiced to you as "beans," and entered by you as "beans"?
A. We are compelled to.
28 Q. I do not ask you that. Is not that the fact?
A. Yes.
Q. And sold as "beans," are they not?
A. Yes.
Q. They are bought and sold in this country as "beans"?
A. Sometimes they are sold differently. They are sold as "bean," yes. May I explain that about the beans?

The COURT: Do you wish to qualify your statement that they are bought and sold as "beans"?
The WITNESS: Yes.
Q. Generally in the markets of this country are not these articles, such as you have imported here, bought and sold as "beans"?
A. They are generally bought and sold; sometimes as seed.
Q. "Seed"—what?
A. Sometimes sold as "seed beans."
Q. "Generally," I ask.
A. When we sell them as seed beans—we have sold them as seed beans—if a man comes in and asks for beans.
Q. Answer my question: How are they generally sold?
A. They are generally sold "beans."
Q. Do you keep a seed store?
A. We do not.

Q. What are these articles used for when they are cooked?

Objected to as immaterial, irrelevant, and incompetent. Question allowed. Exception by plaintiffs' counsel.

A. When they are cooked they are used for food.

Q. That is the general and preponderating use of the article beans in this country, is it not?

A. To a great extent.

Q. I say "the preponderating use."

A. Yes, it is used to a great extent that way; but there are a good many used for seed purposes.

Q. I understand that. We will not forget the seed. Now, as to the lentils. What are lentils used for when cooked?

PLAINTIFFS' COUNSEL: I will take the benefit of the same objection and exception to that question.

A. When cooked, for soups and food.

Q. They are generally used for that purpose, are they not?

A. Yes.

29 Q. They are not generally raised in this country at all, are they?

A. There are some raised in this country.

Q. Will you tell me where?

A. In Michigan; in the neighborhood of Detroit and in that section.

Q. Their propagation out West has been of quite recent date?

A. No; I remember them since 1881 and 1882 and along there.

Q. Did you ever buy any that were raised in this country?

A. I have.

Q. Where from?

A. From Detroit and Milwaukee.

Q. Do you know of any other use that they are put to as a general use except for soups and to be used for food?

A. Except for food.

Q. Of course, they have to be raised; we understand that; but I mean for general use.

A. For general use they are used for food.

Q. Have you not often seen beans in a cooked state called "vegetables" on ordinary bills of fare in restaurants?

Plaintiffs' counsel objected.

THE COURT: I should be inclined to sustain your objection except for the ruling of the supreme court, by which I shall be compelled to overrule it and give you an exception.

A. I have seen them on bills of fare in restaurants as "beans," and I don't know, but I suppose some restaurants classify them as "beans" and as "vegetables." I have seen them classified so on bills of fare.

Q. You never saw them classified as "seeds" on bills of fare, have you?

A. They don't supply seeds in restaurants, I believe.

Q. But they do supply beans?
A. They supply beans; yes.

Redirect examination by plaintiffs' counsel:

Q. I show you an invoice by the Bohemia of October 29, 1887, and ask you to point out where these articles are described
30 on that invoice.
A. Right there.

Invoice read in evidence as per the following extract: "100 bags Bohemia lentils, gross, 5,000 kilos, less 100 kilos tare. Net, 4,900 kilos, at $21\frac{20}{100}$ marks per bag. Charges, empty bags, lighterage, commissions, brokerage, legalization, &c." (Said invoice is marked "Exhibit No. 9.")

Q. I ask you the same question about the Vaderland invoice of October 26, 1887, and ask you to indicate upon this invoice where the commodities in question are stated.
A. There.

Invoice offered in evidence and the following part read: "478 bags white hand-picked Danubian beans. Gross per net." (Said invoice is marked "Exhibit No. 10.")

Q. I show you an invoice by the Pennland, of November 4, 1887. Will you indicate where those articles are specified?
A. There.

Invoice offered in evidence; at the point indicated following part read: "240 bags white hand-picked Danubian beans." (Said invoice is marked "Exhibit No. 11.")

Q. The next is the invoice by the Noordland of Jan. 4, 1888. Please look at that invoice and indicate where these articles are mentioned.
A. There.

The following extract therefrom was then read in evidence: "475 bags white hand-picked Danubian beans. Gross per net, 47,500 kilos." (Said invoice is marked "Exhibit No. 13.")

Q. The invoice by the Alsatia of March 9, 1888, is shown to you. Please indicate where these articles are mentioned.
A. There.

Invoice read in evidence and the following extract suffices:
31 "Shipped per Alsatia to New York to order 60 bags haricots, 44,108 bags haricots, 25." Then follow the prices: Bags, at 6 cents; shipping, freight, and other charges. (Said invoice, already marked "A for identification," is now marked "Exhibit No. 13.")

Q. The Westernland, of December 8, 1887. Please indicate where the beans are mentioned on that invoice.
A. There.

Invoice in evidence by the following extract: "500 bags white hand-picked Danubian beans." Then follows a similar description of charges, &c. (Said invoices marked "Exhibit No. 14.")

Q. In respect to the entries which you have been asked about—you said something about what you were required to do in describing the goods when you made an entry. What was it you said on that subject?

A. Our custom-house broker tells us that we are required to enter them just as they are invoiced, and he makes out all the——

(Defendant's counsel interrupts by objecting.)

Q. State what you actually did about these entries.

A. We are required to enter them just as they are invoiced; we are not permitted to do otherwise.

Q. I observe that some of the entries state so many "bags of beans" and so many "bags of lentils," and that you made an affidavit upon the entry. That was correct as far as it goes, was it not?

A. So far as it goes; yes.

Q. Does that description by itself, if so many "bags of beans," sufficiently identify the particular articles as to enable you to make commercial transactions in it?

A. No; it does not.

Q. For the purpose of commercial usage a more detailed description is essential, is it not?

A. Certainly.

Recross—Defendant's counsel:

32 If a man came into my store and asked for 100 bags of beans it would not describe to my mind any particular merchandise. If he said "common field beans" or "medium beans" I would ask him then which kind of field seed he wanted when he asked for field beans. These articles were bought and sold in the commerce of this country in 1883 as "beans," but when a man comes into the store and asks me for a certain kind of field bean I would ask him whether he wanted the "field pea bean," or the "seed of the field pea bean," or the "seed of the white medium"—or which kind of beans he wanted.

Q. How long is it since you commenced to ask a man whether he wanted "seed"?

A. We have always asked him that.

Q. When a man comes into your store you ask him whether he wants the seed of the bean plant instead of the beans?

A. Certainly.

Redirect examination:

Q. Do you know what these were used for—these particular importations? What class of dealers did you sell them to?

A. We sold them to all classes of people. Some were sold to farmers and to all classes—to every kind of people.

Q. Were any of them sold for planting that you know of?
A. I know that some were sold for that purpose.
Q. There were?
A. Yes.

By the COURT:

Q. Do you speak of this particular importation?
A. Yes.
Q. You understand that you are speaking of these six importations which are in suit?
A. Yes.
PLAINTIFFS' COUNSEL: Do you know to whom?
A. I do not always sell the beans, but I remember one instance of a man coming in to the store and buying ten bags of these,
33 and he said that he wanted them for planting; that he wanted them for seed.
Q. One of these importations?
A. Yes; one of these importations.
Q. You do not know where they were shipped to, do you?
A. I think they were shipped to the neighborhood of Brockport, New York.
Q. Do you know the man's name?
A. I can't state his name, but I think it was Bonoegtyn, or something like that. He was a farmer. We do not follow our goods into consumption generally.

Defendant's Counsel:

Q. How many bags of beans were there in these importations in suit all together?
A. There must have been in the neighborhood of 1,700 or 1,800 or 2,000. I remember several invoices of 478 and 500 bags.
Q. Of what particular importation were these ten bags that you say you sold to a farmer for planting purposes?
A. These were all a round bean.
Q. I do not ask you that; but of what importation; by what vessel?
A. By the Alsatia.
Q. Of what date?
A. I can tell by referring to the entries.
Q. I want it from your memory, when did you sell these beans?
A. It was either the latter part of 1887 or the beginning of 1888; I think it was the beginning of 1888.
Q. In what month?
A. It was in the winter. I cannot state positively.
Q. Have you any entry of that sale of those ten bags in any books in your possession?
A. Not in my possession here. I suppose that we could find it.
Q. Can you produce it?
A. That I cannot say positively.

Q. What was the man's name?

A. I think it was Bonoegtyn, if I remember rightly. He was a farmer. He came in and paid for the goods and we shipped
34 them. I only know for what purpose he used them from what he told me. He told me what he wanted them for.

Q. Do you know for what purpose he used them after he go them?

A. No; I do not.

Q. Will you please produce here to-morrow the book having the entry of that sale in it?

A. I will if I can find it. I will try to find it.

The plaintiffs then called JOHN WAKEMAN, whose testimony tended to show as follows: I am a produce merchant of a little over thirty years' experience. My firm is John Wakeman & Company, 65 Broad street.

Q. Has your commercial experience extended to articles represented by all the samples that are before you (showing witness all the samples in evidence)?

A. I am familiar with all these goods, yes.

Q. Are you familiar with the staple commodities that in commercial usage are classed under the term "vegetables"?

A. Yes.

Q. Are you familiar with the staple commodities which in commerce are classed under the head of "seeds"?

A. I think so.

Q. Will you state which, if any, of those articles represented by all the samples before you in commercial usage are classed under the head of "seeds," and which, if any, are classed under the head of "vegetables"?

A. As I know the commercial usage, these are all vegetables (referring to Exhibits 5, 6, 7, and 8).

Q. What about samples 3 and 4—are they vegetables?

Objected to as immaterial and incompetent. Question excluded. Exception by plaintiffs' counsel.

Q. Now finish your answer with respect to these.

THE COURT: I sustain the objection to the question.

PLAINTIFFS' COUNSEL: But the prior question was not answered.

35 DEFENDANT'S COUNSEL: Do you mean those two in suits?

PLAINTIFFS' COUNSEL: Yes.

DEFENDANT'S COUNSEL: That has been ruled out.

PLAINTIFFS' COUNSEL: But the other question was allowed.

THE COURT: He answered that Exhibits 5, 6, 7, and 8 are vegetables. Now, if you ask whether the other articles are vegetables, I disallow that question, for that is what the jury are to determine.

Q. Have you answered my question with respect to samples 3 and 4? What are samples 3 and 4?

36 DEFENDANT'S COUNSEL: I object to that

THE COURT: I sustain the objection.

Q. Will you please look at all of the samples which we have shown you and state what they are?

DEFENDANT'S COUNSEL: That is objected to, if it included samples in suit, because it is but another way of getting around the objections which have been made and sustained by the court.

The COURT: Objection to the question in that form is sustained. You can separate the question and put it separately as to each article, so that a ruling, one way or the other, can be obtained and an exception taken.

PLAINTIFFS' COUNSEL: I will leave the question as it is for the purpose of taking an exception.

The COURT: Certainly, you have your exception.

Q. Are you familiar with the commodity represented by samples 3 and 4?

A. Yes.

Q. How long does your familiarity with that commodity extend?

A. Ever since I have been in the business.

Q. Will you please state the distinguishing characteristics, if any, of that commodity?

The WITNESS: What do you ask me?

PLAINTIFFS' COUNSEL: I show you sample No. 3 and ask you to state the distinguishing characteristics, if any, of that commodity.

A. It is lentil.

The COURT: That is not an answer to the question. The question asks you to state the distinguishing characteristics of it.

PLAINTIFFS' COUNSEL: I will ask that question about sample No. 8, and ask whether he can state by an inspection some of the
37 distinguishing characteristics, if any, of that particular commodity.

A. This is a bean in the pod——

The COURT: That does not answer the question.

PLAINTIFFS' COUNSEL: Give a complete description in answer to that question.

The COURT: The first part of that answer must be stricken out as not responsive. To state that it is a bean does not give its distinguishing characteristics.

PLAINTIFFS' COUNSEL: I respectfully take exception to your honor drawing any conclusion from the witness' testimony. I take the benefit of an exception and insist that the answer ought to stand if your honor strikes it out. I ask the witness to answer the best he can.

The COURT (to the witness): Now, state the distinguishing characteristics of that—not to give its name, but state its characteristics.

The WITNESS: It is—do I understand you as asking for a comparison in characteristics?

The COURT: The counsel has suggested to you no comparison to make.

PLAINTIFFS' COUNSEL: Give the best answer you can—a straightforward answer to a straightforward question. State the characteristics, if any, of that particular commodity.

The WITNESS: This is a vegetable that is used for food.

DEFENDANT'S COUNSEL: I object, and move to strike that out as irresponsive.

The COURT: It is not responsive. Objection sustained.

PLAINTIFFS' COUNSEL: I take the benefit of an exception and ask the witness to proceed and answer that question.

The WITNESS: It is an article used for food, produced from a seed planted in the ground. Of course, its name—

38 THE COURT: Never mind its name.

The WITNESS: I do not know that I can say much more than that about it, except that it is produced in the regular way, from seed that is planted, as ordinary seeds are planted.

The COURT: You can state the color, shape, growth, &c.

The WITNESS: The manner of producing this thing is—if I may state it?

The COURT: Certainly.

The WITNESS: They use a seed generally from what we have seen here and prepare the ground, and——

DEFENDANT'S COUNSEL: I object to this and move to strike it out. He is not stating the distinguishing characteristics of the article which is before him. He is stating how it is grown, and that does not state its characteristics.

The COURT: I understood that he was going to state what stage of its growth it had attained.

DEFENDANT'S COUNSEL: Then let him state it without going through the whole process.

The WITNESS: It is not fully grown. It is not thoroughly matured—this article here is not.

DEFENDANT'S COUNSEL: We all know that.

The WITNESS: I am aware of it.

The COURT: That seems to be quite a comprehensive answer that he makes.

The WITNESS: And it is green.

Plaintiffs' counsel:

Q. Do I understand you to say that the articles in sample 8 are not thoroughly matured?

A. Certainly not.

Q. Now, will you please state whether the commodity represented by sample 4 is or is not thoroughly matured?

A. Yes; these are matured.

Q. Please state the distinguishing characteristics, if any, of that commodity represented by that sample. (Indicated the sample of the importation involved.)

39 A. This article here is of the same variety as these, only these goods are matured. They have been threshed out from the pod after having been gathered from the field, and they are dried; some-

times they are dried in the sun and sometimes otherwise, while this article here can be produced by planting, but that one cannot be.

Q. You have seen them grow. Have you seen them raised?

A. Yes; in the field.

Q. Describe the method by which the production of the articles represented by sample No. 4 results in the commercial commodity.

A. These goods are grown from the seed planted. Where they are grown in quantities the ground is prepared in drills, and they are planted sometimes by hand and sometimes by a cultivator, and they are cultivated afterwards. They are hoed, and as they come up they are cared for, weeded, and ploughed, and the plant obtains a height of perhaps 12 to 18 inches; I have seen them as high as that. Sometimes I have seen these other things growing on poles as well, but generally the bean is a plant which is some 12 or 18 inches high—a bush, with pods coming out from the top and hanging around the bush. They are sometimes taken off and sold in the green state, like these, before they are thoroughly matured. Afterwards they are matured, and after they become dry enough they are threshed out; or, I might say, they sometimes pull these plants or cut them, just as the farmer thinks best, and sometimes they allow them to dry in the field and to cure there. They need sunshine and dry weather to cure them well. Then when cured they are taken to the barn and threshed out. Sometimes they are threshed in the field by spreading a flooring or canvass on the ground. I have seen large fields in California where they are threshed, bagged, and everything in the field. They are taken then to the barn (that is, as raised in this part of the country,) and there they are assorted out by the farmer and run through his fanning mill, and the pods, sticks, stones, dirt, and gathered wood are blown out, leaving the beans comparatively free from dirt. Sometimes the farmer takes them himself—most generally takes them—to the nearest station where they handle these goods, where they handle them in large quantities; sometimes they have warehouses and machinery to put them in condition for the market. I do not know as I can tell much more about it.

Q. Are they sorted?

A. These people who make a business of packing these in bushels have elevators and warehouses. Do you wish me to describe the way that is done?

Q. Yes.

A. They generally elevate them to a higher story of the warehouse and they come down. They have a large band running over rollers across the room—forty or fifty feet across—and there are pickers who pick these beans. They pick these beans before going to market. That is the way they are cleaned and picked. They pick out the dead beans which are caused by the pods hanging down and striking the ground; that causes the bean to rot or to turn black. A black bean is, of course, an objection, and if sold in that state they bring much less money; but if they are hand-picked, as it is done in these warehouses, then they bring their full market price. They go

over this band, which is worked by machinery, and there are
41 pickers, girls generally, sitting on each side, who pick the beans as they come along on the band. At the end of the band they go off into a recepticle, and are then put on the cars and shipped here or to the West or wherever they are sent. They are mostly sold by the large dealers in car-loads of about 90 to 100 bushels to the car-load, in quantities of 500 or 600 bushels, perhaps.

Q. In commercial transactions, in dealing with these commodities which you refer to, does each species have its distinguishing characteristics by name or otherwise to distinguish it from others of its kind?

A. They all have names.

Q. And in commercial dealings, with respect to each kind, they are specifically described are they?

A. They are named generally; they all have their names commercially.

Q. Can you give us some of those names?

A. I can give you 20 or 30 of them, if you want.

Q. There are 20 or 30 names, are there not?

A. Yes.

Q. Will you state some of them?

A. There are the white mediums, the white kidneys, the white marrows, the white pea beans, the red kidneys, the red marrows, the valentines, the scarlet runner, the lima bean, and a great many more. They each represent a species of one general variety. All these thing I have named contain the germinating principle.

Q. Do these samples 3 and 4 contain the germinating principle?

A. To the best of my knowledge.

Q. Does sample 8 contain the germinating principle in its present form?

A. I think not.

Q. What must be done to it before it does?

A. It has to mature; it has not matured, and therefore it has not the germinating principle.

42 Q. Please state the distinguishing characteristics of this article, No. 4, if any, which distinguish it from the other parts of the vegetable of which it is a part.

A. This being a matured bean, it will produce its like if planted. Therefore it is a seed as compared with this one, for example, for the reason that this one will not produce its like, although it is a bean.

Q. That is the white medium bean?

A. Yes.

Q. And is that also true with respect to sample No. 3?

A. In regard to the producing power?

Q. Yes.

A. In my judgment this will produce itself if planted; I have no doubt about that. I will not say that this sample will, but this article will.

Q. Can you state whether the value, for commercial purposes

generally, of articles represented by samples 3 and 4 is or is not diminished if the germinating power is not present?

A. Do you mean that they are more valuable in this shape than if they were in that shape? Is that the idea?

Q. No; I mean if samples 3 and 4 and like that do not contain the germinating principle, does that circumstance diminish or not their value for commercial purposes?

A. If, for instance, these goods were dried by heat, or kiln-dried, they would not grow, and therefore they would not have the same value as they would if they were not cured in that way.

Q. And the same way with the lentils?

A. I should say so.

Q. And do they not make better food when they have the germinating principle there?

A. That I cannot say.

Q. You do not know about that?

A. No.

Q. Do samples 4 and 8 belong to the same general family or not?

(Objected to as immaterial. Question excluded.)

43 PLAINTIFFS' COUNSEL: I mean the same botanical family.

DEFENDANT'S COUNSEL: That is objected to as immaterial.

THE COURT: The witness is not shown to be competent to answer. That is a scientific question, and if you qualify him as competent he may answer.

PLAINTIFFS' COUNSEL: Your honor will reserve me the benefit of an exception.

Q. Commercially speaking, are those articles classed in the same commercial class?

DEFENDANT'S COUNSEL: That is objected to as immaterial.

THE COURT: The objection is sustained.

Q. To what class, commercially speaking, do the articles represented by sample 8 belong?

(Exception allowed by plaintiff to sustaining the foregoing objection.)

A. These goods are sold entirely as vegetables, the same as these here (referring to Exhibits 5, 6, and 7).

Q. To what class, commercially speaking, do the articles represented by samples 3 and 4 belong?

A. This sample 4 we sell as beans. We sell them for—we have sold them for different uses; we sell them as beans. We do not handle these goods at all—th*is* is, we do not buy and sell them; they are not in our line; they are in a different line entirely, and are quoted differently in the journals, and are known commercially as entirely different from these goods. They are not handled by the same people, as a general thing.

Q. How about sample No. 3?

A. I should give the same answer with regard to that.

44 The COURT: Except that you do not sell it as a bean.

The WITNESS: No; we sell those as lentils, but as a matured product; it is an entirely different class of trade.

Q. You spoke of the classification on trade lists, &c. Can you identify lists where articles of this kind are specified?

A. Can I identify them in trade circulars? Do you mean that? Yes; certainly I can.

Q. Can you state generally whether in such trade circulars articles like sample 4 are or are not classed under the head of "vegetables"?

A. They are not classed under the head of "vegetables" in trade circulars.

Q. Are articles like sample No. 3 classified under the head of "vegetables"?

A. No, sir; they are not.

Cross-examination by defendant's counsel:

Q. What is your business?

A. I am a produce merchant.

Q. Do you deal in beans and peas?

A. Yes.

Q. And in lentils?

A. We buy and sell lentils, but not to any large extent.

Q. Is your house a produce house?

A. We call it so.

Q. Do you sell articles like Exhibits 3 and 4?

A. Like those two here? Yes; we buy and sell them.

Q. Some of the beans that come here in that shape have not the germinating qualities, have they? It depends upon how they have been prepared, does it not?

A. Do you ask if it depends on how they are cured?

Q. Yes.

A. I have seen beans that were kiln-dried, that I do not think would grow.

Q. And do they not lose their germinating power after a few years?

A. I think so; but I do not know how many years.

45 Q. What is the predominating use of such articles as Exhibits 3 and 4 in the markets of this country?

PLAINTIFFS' COUNSEL: We reserve the benefit of an exception to that.

The COURT: Yes, take an exception.

Q. What is its chief use?

A. For human food.

Q. What particular kind of beans do you call these?

A. The white medium.

Q. They are bought and sold under that name in the markets of this country?

A. I believe so.

Q. And were in 1883? There has been no change in that respect?

A. I think not; some call them "imported medium."

Q. All about the same thing?
A. No; I do not want to say that.

The COURT: Counsel means to ask you if the terminology is about the same now as in 1883?
The WITNESS: Yes; there is no difference between the names in 1883 and the present time.

Q. Do you deal in these articles—the beans—largely?
A. I think so.
Q. Do you import any?
A. Yes.
Q. Have you any suits on this same issue?
A. Yes. (See p. 48.)
Q. You sell such articles as Exhibits 3 and 4, do you say, throughout the United States?
A. Yes, we sell them through the United States, wherever we can.

The plaintiff then called JAROSLAV HUSSA, whose testimony tended to show as follows:

PLAINTIFFS' COUNSEL: I show you the invoices which are marked in this case and ask you if you made entries at the custom-house upon those invoices.
A. Yes, they are all in my handwriting. I made all the entries myself.

46 A. I am a custom-house broker now and was then, and *and* acted for the plaintiffs in respect to these entries. I made them out before Mr. Sonn signed them, and in accordance with the usual custom and regulations then in force applicable to this class of merchandise, and one of my clerks made payments in accordance with the figures upon the entries, all under my direction and at the rate of ten per cent. I got the permits to take the goods out after I had made such payments, and I made such payments in order to get the goods. All the entries offered in evidence and heretofore marked as Nos. 9, 10, 11, 12, 13, and 14 to correspond with the invoices.

FREDERICK W. BROOKS, sworn and examined as a witness for plaintiffs, who was a custom-house officer, then proved that the amount, if any, recoverable, so far as it rests upon the items that had been regularly protested and appealed, and suits seasonably and regularly instituted under the statute, and excluding any item where the statute had not been complied with, was as follows: The total principal is $767.90, the total interest is $48.21, making a grand total of $816.11, and in respect to that amount the suit is regular.

The plaintiffs then called WALTER CARR, whose testimony tended to prove as follows: My business is produce and commission, of the firm Walter Carr & Company.
Q. I show you the samples which are in evidence in this case, namely, samples 3, 4, 5, 6, 7, and 8, and ask you whether your commercial experience has extended over that class of commodities?
A. More or less, for nearly forty years.

Q. Has your commercial experience enabled you to tell the jury what are some of the staple commodities that are commonly
47 dealt in in trade under the style of vegetables?

A. As vegetables, a man who deals in potatoes, onions, beets, spinach, and all kinds of green stuff is considered a vegetable dealer, and so designated.

Q. Those are the products that are sold as vegetables in trade?

A. They are. There are many other- also.

Q. Give a description.

A. Green corn, in the green state; bean pods, in the green state, or parts of the bean plant; peas, in the green state. There are various others that I do not think of.

Q. Now look at sample No. 8. What have you to say about that? Is that a vegetable?

A. Yes; that is commercially known as a vegetable. It is the green pod of the bean plant, and is commercially known as vegetable.

Q. Give a detailed description of that article, if you can.

A. My answer already covers that.

Q. Now look at samples 3 and 4. Take up one of them. Take sample 4, for instance, is that a vegetable?

A. No, sir; it is not.

Q. Describe that article, No. 4.

DEFENDANT'S COUNSEL: I object and move to strike that last answer out.

The COURT: I did not hear any objection to that question, but I will grant the motion to strike out.

DEFENDANT'S COUNSEL: That is something for the jury to determine and not the witness.

PLAINTIFFS' COUNSEL: I reserve the benefit of an exception to that.

The COURT: Certainly, with the same force and effect as if the question had been objected to and excluded and an exception been taken to the refusal to allow the question.

Q. Now, referring to sample 4, are these articles commer-
48 cially known as vegetables?

A. No, sir; they are not.

Q. Now, will you please describe in detail sample 4? State the characteristics, if any, of that article which you observe to distinguish it.

A. The characteristics which distinguish this article are that it is the matured dry portion of a plant containing the first original principle of production, and, like all seeds which are essentially distinguished from the plant and vegetables produced by them by the absence of succulent qualities.

Q. Look at sample No. 8. Is the succulent quality there?

A. Yes.

Q. Look at sample No. 8 again. Does it, in its present immature form, contain the principle of reproduction?

A. No, sir.

Q. Look at sample No. 4. Is its utility and value for food enhanced or diminished if that principal of reproduction be present or absent?

A. If the principal of reproduction is present its value is enhanced by it; if it is not it shows that the article has been cured in some way to make it defective and therefore of less value—of less nutritive quality.

Q. I ask you the same question about sample 3 as I have about sample 4, and ask whether your answer applies to that article?

A. The answer that I gave with regard to sample 4 would be the same with regard to sample 3.

Q. Referring to samples 3 and 4, are or are not these articles seeds?

Objected to as immaterial. Question excluded, and an exception to such exclusion was duly taken by plaintiffs' counsel.

Q. Referring to articles 3 and 4: Are those articles commercially known as seeds?

49 A. I can hardly say what other people know. I can only answer what I know myself.

Q. Do you know the class of articles that are commercially designated as "seeds"?

Objected to. Question excluded. Exception by plaintiffs' counsel.

Q. Do you know under what commercial classification articles represented by sample 8 are usually classed in trade lists?

A. Classed among the vegetables. I am familiar with the trade publications, trade lists, price lists, that have been published for many years.

Q. Do you know whether the trade classifications which you have testified to just now are in accord with our common observation?

DEFENDANT'S COUNSEL: I object to that as immaterial.

The COURT: The objection is sustained. We can see the trade lists and determine for ourselves.

PLAINTIFFS' COUNSEL: I will reserve the benefit of an exception.

Q. (Handing witness paper.) Will you see if that is such a trade list as you have spoken of?

A. Yes, sir; it is, and is dated January 18, 1886.

Q. Do the others before and after that time correspond with that in method of classification?

A. Yes; this is regular.

Q. Is this your own price list?

A. Yes. I would like to extend my answer to that by saying, with regard to this price list, that it is published by a firm that makes a business of getting information from the trade, and we take some and others take some, and we have our card put in.

Q. It is one of the standard publications?

A. It is one of the standard publications.

50 (Said price list is marked Exhibit No. 15 for identification.)

Q. Can you state what are some of the other seeds which are staples of commerce?

A. Flaxseed, linseed, mustard seed, clover, timothy, hemp, and of course all the different grains are seeds.

Q. Such as rye, oats, barley, wheat, &c.?

A. Yes.

Q. Are some of them staple commodities used for manufacturing purposes?

A. Yes.

Q. And are they used in various forms after being converted from the kernel?

A. Yes.

Q. Will you give an illustration?

DEFENDANT'S COUNSEL: I object to illustrations. We want only facts from the witness.

A. Cotton seed is one that I did not mention before. It is used for oil—for table purposes, and also for food for cattle. Hemp seed is also used for manufacturing, and flaxseed to produce oil and oil-cake.

Q. What seed is that made from?

A. The oil-cake I think is made from the cotton seed, but I am not certain about that; or from flaxseed.

Q. What is the seed of the cake that they use in stables?

A. I am not positive about that. I have known, but cannot bring it to mind.

Q. Do you know of caraway seed?

A. Yes.

Q. What do they make of that?

A. I am not familiar with all the uses that it is put to. I know that it is used by bakers.

Q. I speak now of the seeds that are used for manufacturing purposes. Do you know of these seeds being used for any special purpose—as in cakes? I mean Nos. 3 and 4.

A. Yes, sir; I do. They are used for human food and for feeding animals sometimes.

Q. Do you know of mustard seed being manufactured?

A. Yes.

Q. And linseed?

A. Yes.

Cross-examination by defendant's counsel:

51 Q. Is there any different meaning to the term "seeds" in trade and commerce and in ordinary speech?

A. I do not know as I understand the question.

Q. Is there any difference in trade and commerce, in ordinary speech, in the meaning of the word "seeds"?

Plaintiffs' counsel objected on the ground that it is immaterial, irrelevant, and incompetent, and that it does not arise out of any of the examination-in-shief which has been allowed.

Question allowed. Exception by plaintiffs' counsel.

Q. In other words, do you in your trade circular put anything under the word "seed" as the commercial name?

A. We do; yes.

Q. Will you point out in your circular any heading of any list of articles where you use the word "seeds"?

A. The word "seeds" is not used here.

Q. That is what I ask you. I ask whether it is used commercially?

A. Yes, it is used commercially.

Q. On your circular?

A. Not on that circular.

Q. Used to denominate any article?

A. Yes.

Q. On your circular is it used to denominate any article or class of articles?

A. On a certain publication——

Q. On this circular?

A. On that circular, no, sir.

Q. Look at those two papers and see if they are circulars of your firm.

A. Yes; they are.

Q. Are they the same?

A. The same publication as the other.

Q Are they the same publication as the others, and the same classification of articles as the other?

A. Yes.

(The two circulars are offered in evidence and marked Exhibits B and C.)

Q. If a man should come into your place and ask for one hundred bushels of "seeds," what would you give him?

52 PLAINTIFFS' COUNSEL: That is objected to as incompetent and immaterial, and that it does not arise out of any examination-in-chief which has been allowed.

Question allowed. Exception duly taken by plaintiffs' counsel.

A. I would ask him what kind of seeds he wanted.

Q. The word "seeds" would not designate any article of itself?

A. A great many articles are seeds that are designated by the word "seeds."

Q. There are a great many articles of seeds that you do not deal in?

A. Yes.

Q. In the ordinary intercourse among commercial men the articles represented by sample No. 3, the "beans" as we call them, are commonly called what?

A. They are called "beans," just as the plant is, from every stage up.

Q. That is the name in trade and that is the common name?

A. That is the common name.

Q. What is the predominant use of the article "beans," as represented by this sample—the chief use?

Objected to as immaterial. Question allowed, and exception duly taken by plaintiffs' counsel.

A. Like all seeds that are used for consumption, a much larger proportion are consumed than planted. They are used for food for men and cattle, and for various manufacturing purposes, other than as seeds. The larger proportion are used for food.

Q. Are you acquainted with the publication known as the Commercial Gazette?

A. I may have seen it. I can hardly say that it is a standard publication among merchants. It is a private publication, and I should not consider it a standard. It is published by the firm of Napheys & Co. I think it is not circulated generally among merchants who deal in such articles as these; it is purely a pri-
53 vate publication. My trade list is not a private publication; it is made up from the trade generally.

Q. Are you acquainted with a publication called the Grocers' Journal?

A. I have seen it. I should not consider it a standard publication. I do not take it or the Commercial Gazette. I am acquainted with the firm of Austin, Nichols & Co. They are a large grocery house. I cannot say that I am familiar with their price current. I have seen it.

Q. Will you look at that price current of Austin, Nichols & Co. and say whether that correctly designates the different classes of articles in which grocers generally deal, including the articles in suit?

PLAINTIFFS' COUNSEL: I object to that until it is shown that this is a standard publication. If we are correct about it, that publication is only a publication that indicates to the customers of Austin, Nickols & Co. what the prices of certain of their goods are. It is intended as an advertisement among those customers, and is not a standard trade publication respecting general usages; and, besides, it only relates to the grocery trade; and, further, this particular paper has not been proved.

The COURT: it is not yet offered.

PLAINTIFFS' COUNSEL: And therefore they cannot ask about it until they get along a little further.

Question allowed. Exception by plaintiffs' counsel.

A. I cannot say, for the reason that this is a private publication and is circulated according to the private methods of the firm. In order to answer that I should have to go through the whole thing, and it would take me an hour to do that. I shall have to
54 examine all these pages first. I am not very familiar with that price list of Austin, Nichols & Co. I could not answer that question without examining the paper carefully. Thurber, Whyland & Co. are large grocers. They are large dealers in provisions and groceries.

Q. I will ask you the same question with regard to the papers I have just shown you as I did with regard to the circulars of Austin,

Nichols & Co., whether they represent different classes of goods as known commercially and popularly, including beans and such articles as are in suit.

A. These private publications were rarely see-. It is very seldom that we see them, and I could not answer your question without examining each item.

Q. I will call your attention to that, what are "refugee beans"?

A. It is reddish bean with a dark stripe like calico. I am not positive whether it is what is called a "field bean" or a "pole bean." Growers distinguish them in that way.

Q. I want to call your attention right here (so as to save time) to this heading "vegetables," where there are different kinds of beans. Will you read what you find there in that price list of Austin, Nichols, & Co.? Do you agree with that classification under the head of "vegetables" as you find it there—yes or not?

Objected to as immaterial. Question allowed. Exception by plaintiffs' counsel.

A. I cannot say whether I do or not, for reasons which I will give if permitted. Under the head of "vegetables" in that list I find "beans" of various kinds. (The circular of Austin, Nichols & Co. above referred to is marked D for identification.)

55 Q. Now, I will call your attention to the price-list of Thurber, Whyland & Co., under the head of "vegetables." Do you find any "beans" there?

A. Yes, sir; I do. I find "Boston baked beans" there under the head of "vegetables" and several other kinds. It does not state whether they are in cans or not. We deal largely in the article represented by sample- 3 and 4; not much in lentils.

The COURT: Either 3 or 4 is lentils.

The WITNESS: I thought they were both beans.

Q. You deal largely in beans, but not largely in lentils?

A. Not largely; to some extent. The predominant use of lentils in this country is the same as of beans. I understand that they are chiefly used for food. I have no suit against the collector on this issue that I am aware of. There were "green vegetables" and "dry vegetables" known in the trade in 1883. There was a distinction between them in the trade. That is not the reason I put the words "green vegetables" on my last circular. If they were dried vegetables they would probably come under the head of "evaporated." In my two other circulars, which are marked for identification, I have used the term "vegetable," but not "green vegetables." It amounts to the same thing. There are green peas which are green in color, and which we put under the head of "beans and peas." Fresh green peas would come under the head of "vegetables."

The circular which has been marked No. 15 for identification was then read in evidence. It has been sufficiently described in the testimony and need not be incorporated here.

Redirect examination by plaintiffs' counsel:

56 On these circulars there is a classification under "vegetables" or "green vegetables" and another classification under the head of "beans and peas," both classifications enumerating a list of separate articles. The green peas that are mentioned up there under the head of "green peas" refer to the dry, matured seed pea of that color.

Q. Among produce dealers and in publications recognized in the trade as standard publications and not particular firm lists like those which have been identified—like Austin, Nichols & Co.'s paper and like Thurber, Whyland & Co.'s, just shown you—but in the trade standard publications, is it usual to classify articles like sample 4 under the head of vegetables?

DEFENDANT'S COUNSEL: That is objected to unless some trade publication is shown or referred to.

Q. Do you know of any such instance?

The COURT: I think that I shall have to sustain that objection. He can testify as to what it is known as in trade, but I cannot allow him to testify as to second-hand publications. I sustain the objection to the question in that shape.

Exception by plaintiffs' counsel.

Q. Do you know of any standard trade publication that is different in its classifications from these three which have been shown you and which the jury are now examining?

DEFENDANT'S COUNSEL: The same objection.

The COURT: The objection is sustained until he first testifies whether he knows of any standard trade publication at all.

57 Q. Do you know of any standard trade publication?

A. Yes, I do. The Urner Publishing Company's Prices Current.

Q. Is that here?

A. Yes.

Q. Which is that?

A. The ones that you have handed to the jury.

Q. These three?

A. Yes.

Q. Do you know of any other standard trade publication that is used among merchants for this class of commodities?

A. No, sir; not outside of the newspapers.

Q. Is the Journal of Commerce one of the publications under the head of newspapers which contains such standard information?

A. Yes.

Q. What other, if any?

A. The Daily Bulletin.

Q. Do you know of any others?

A. All the papers publish the market prices, more or less.

Q. Can you produce some of them?

A. I could if I had the opportunity. In trade and commerce the

plural noun "seeds" does not individualize any particular commodity. For commercial dealings a more specific designation or description is required to identify the commodity.

Q. Does it indicate a class of commodities?

Objected to as immaterial. Question allowed. Exception by plaintiffs' counsel.

A. I should say that it would, in that sense.

Q. And in the commercial sense?

A. Yes. The term "vegetables" does not individualize any particular commodity. Both commercially or in common speech it designates a class.

By the COURT:

Q. Then there is no difference between common speech and trade usage in that particular. Is that so? It simply designates a class of articles?

A. I think there is no difference.

By plaintiffs' counsel:

Q. In dealing in the articles represented by sample 4 is it or is it not necessary in commercial transactions to describe them by
58 some name or other description in order to identify the particular commodity which is the subject of the transaction?

DEFENDANT'S COUNSEL: That is objected to as something within the common knowledge of all men.

The COURT: It is rather leading. I shall sustain the objection to it as leading.

Exception by plaintiffs' counsel.

Q. How many different kinds can you name, as arising from your own experience, of the commodities which are the seeds of the field bean?

A. There are a great many kinds that I cannot think of. I understand that there are some forty different species or kinds. The commercial designations are the medium, the marrow, the pea, the red kidney, the white kidney, and black turtle soup, the refugee, and many others. I cannot think of the half that I know. There are some thirty or forty different varieties, and in dealing it is necessary to individualize the article in order to designate it commercially, and that is done by name, in common usage. Referring to samples 4 and 8, the term "beans," without any further description, would not serve commercially to identify one of those articles from the other. The term "bean" would not distinguish one of these articles from the other, commercially. You would have to qualify it. They are both commercially, in fact, commodities under the general classification of "beans."

Q. And is one a vegetable?

DEFENDANT'S COUNSEL: That is objected to.

A. One is a vegetable.

The COURT: I will sustain that objection. Strike out the answer, with an exception, of course, to the plaintiffs' to that disposi-
59 tion.

Q. If a customer should come into your store for the purpose of buying vegetables, which one of those two samples would you show him, if either?

A. I would show him these if I had them (referring to Exhibit 8).

By the COURT:

Q. Do you keep both 8 and 4? Do you import them?

A. Yes.

Plaintiffs' counsel:

Q. Look at your circular, Exhibit B, and indicate and read that part of it which designates the article or the class of articles represented by sample 4, if at all.

A. Sample 4 is represented by the term "medium bean." That is in the first column by the term "medium beans." I find in the same column the term "beans, foreign medium." That indicates these. These are the medium beans. When they are foreign they are so designated. That is the custom in the trade circulars. On another circular I find "beans, foreign medium," and "peas, foreign."

Q. Do you find any such term of description in any of these several firm circulars which are shown you by the district attorney?

A. I did not notice any. I can state as to that in a moment, after examining. I do not find that this circular refers to the same thing at all. In the Austin, Nichols & Co. circular, as I understand it, it does not refer to the same commodity. It refers to different kinds of commodities.

By the COURT:

Q. What is the phrase used in referring to the other commodity?

A. In the column under the head of "vegetables," in Austin, Nichols & Co.'s circular, I understand that it refers all to canned goods, and not to these commodities which are represented here by No. 4.

60 Plaintiffs' counsel:

Q. To beans prepared in some form?

A. Yes. These articles in question, like sample 4, are not lima beans. They are not "Boston baked beans" with a piece of pork in them.

DEFENDANT'S COUNSEL: I now offer in evidence the trade list of Austin, Nichols & Co., which has been marked D for identification.

By the COURT:

Q. This is the one that you said was not a standard?

A. It is not a standard.

Q. It is also the one in which you said that "vegetables" referred to canned goods?

A. That is the one.

(Said circular was then received in evidence. It has been sufficiently described in the testimony and need not be incorporated here.)

DEFENDANT'S COUNSEL: I also offer the one of Thurber, Whyland & Co.

The COURT: Let it be marked E.

PLAINTIFFS' COUNSEL: I ought to ask the witness preliminarily about this.

Q. Just state whether that Thurber, Whyland & Co. circular is a standard trade publication or not, and what commodities are referred to under the head of "vegetables."

A. I understand that all the articles referred — here are canned goods.

By defendant's counsel:

Q. These canned goods are beans?

A. Yes; they may be beans in pods or otherwise. Boston baked beans are not beans in pods; they are here under the head of vegetables; those are not beans in the pod; the pork in the beans is supposed to be there and under the head of "vegetables." It is a very common thing for grocers to classify all canned goods under
61 the head of vegetables. By "canned goods" I mean goods like these (referring to a tin can); all goods put up in that shape are generally put under that classification, including goods like 5, 6, and 7 and sample Q.

ALFRED ROELKER, sworn and examined as a witness for plaintiffs, testified: I am in the general importing and commission business. The firm is Louis Windmuller & Roelker. My commercial experience has led me to become familiar with the commercial commodities represented by sample- 3 and 4.

Q. Can you describe the production of that commodity up to the time that it has become an article of exportation?

DEFENDANT'S COUNSEL: That is objected to as immaterial.

The COURT: It is the same question that we had before, is it not? You do not propose to contradict the testimony of the other witnesses as to how it is produced?

DEFENDANT'S COUNSEL: Of course not.

The COURT: Then I shall exclude it as cumulative, inasmuch as one witness, certainly, and I think that two witnesses have already testified how it is produced, and the defendant now states that he does not propose to contradict that testimony.

Exception by plaintiffs' counsel.

Q. I will ask you to look at sample No. 4 and describe it.

A. It is the dry seed of the bean plant; it is not the entire vegetable.

Q. Will you describe what are vegetables?

DEFENDANT'S COUNSEL: That is objected to.

The COURT: Do you mean in trade and commerce? I shall exclude the question unless it is restricted to the trade meaning of the term "vegetable." I shall exclude the general question on
62 the ground that no witness is competent to testify to that, as it is a matter of common knowledge possessed by the court and jury.

PLAINTIFFS' COUNSEL: I asked that question because I have your honor's ruling on a like question, and which you admitted.

Q. Will you describe what are vegetables?

(Objected to as irrelevant.)

The COURT: Do you mean commonly or commercially?

PLAINTIFFS' COUNSEL: Commonly.

The COURT: I will not allow that question.

Exception by plaintiffs' counsel.

Q. Do you know the class of commodities which commercially are known under the term "vegetables"?

A. Yes. It is a class of articles which come into the market in their green condition for the purposes of consumption. It is the fruit, the edible part; it would be a part of the top of the plant, sometimes the whole of it, as in salads—I mean in the lettuce or celery salad.

By the COURT:

Q. The top of the plant or a part of the top of the plant; is that so?

A. Either the top or a part of the top, as in spinach; that illustrates my answer. It may include the root also, as in turnips and carrots, when they are edible.

Q. Look at sample 8 and state whether it comes under that class commercially or not.

A. Yes.

Q. Look at sample No. 4 and state whether it comes under that class commercially or not.

A. No.

Q. Look at sample 3 and say whether it comes under that class commercially or not.

A. No.

Q. Are there commodities that are articles of importation and of commerce which are used for various purposes?

A. Yes. Such as hemp seed, canary seed, the seeds of various flowers, and the bean, I should call so. Some of the seeds
63 I have named are used medicinally; others are used for pressing out oil; others for feed of animals; some for human food. Seed represented by sample 4, is used in its raw condition as food for animals. I believe they grind it at times, but I will not speak positively of that. I have heard that a cake is made of it for dogs; the commodity is dog cake. I do not know how that is made from

the seed. I know that the seed is ground and it has a mixture of medicinal properties connected with it.

Cross-examination by defendant's counsel:

Q. Did you ever raise any beans?

A. I have assisted in it in my mother's garden. Not in this country. The beans were garden beans; also field beans. I have raised them in a field in Germany.

Q. How extensively do you deal in this article of beans?

A. We had 500 bushels last week. The articles represented by sample 4 amongst people generally are called beans, and they are bought and sold in this country by that name.

By plaintiffs' counsel:

Q. Does the term "beans" represent a class or an individual commodity?

A. It represents this particular commodity.

Q. Look at sample 8 and tell me by what name that is bought and sold.

A. Beans. The same name. That name refers to the class of the commodities.

At this point the plaintiffs rest.

The defendant then called witnesses whose testimony tended to show as follows:

EDWIN B. DUSENBERRY sworn, and examined for the defendant:

My business is commission merchant. I have dealt some-
64 what in beans and am familiar with the article as an article of merchandise as well as an article of food.

Q. Have you traveled extensively throughout the country here within the past six, seven, or eight years?

A. I have.

Q. Have you seen these articles when cooked used upon the tables of people generally?

A. I have.

Q. And when so used what were they usually called by people generally?

Objected to. Question allowed. Exception by plaintiffs' counsel.

A. Vegetables.

Q. They are used more extensively in the country than in the city, I suppose, as an article of food?

A. They are.

Q. Have you also seen them designated as "vegetables" when used as food, on bills of fare in restaurants?

A. I have.

Q. What line of commodities does your commercial experience cover?

A. Hay, straw, grain, beans. My specialty is hay, straw, and grain.

Q. What kind of grain?
A. All kinds of grain.
Q. What are they?
A. Wheat, rye, oats, and corn, used for food.
Q. Are those grains that you refer to the seeds of the plants?
A. They are seeds of the plants.
Q. Do I understand you to say articles like sample 4 are used more extensively in the country than in the city?
A. They are used all over. I think they are used more in the country than they are here.
Q. Do you mean that more people use them, or that they are more an article of use?
A. I think they use them oftener as a vegetable in the country than they do in the city—they eat them more times a week.
Q. In respect to the quantity of the product consumed, you do not mean to say that they are more extensively consumed in the country than in the city?
A. I mean that they use them oftener.
Q. You do not mean that they use up more of them?
65 A. I hardly like to say that.
Q. That is not what you meant a while ago, is it?
A. No.

The COURT: He said that it was a more frequent occurrence that they appeared as food.

Q. What do you found that observation upon?
A. On general principles. I have been in the country very often, and beans are set before me very frequently—more frequently than they are in the city, unless I order them specially at the restaurant.
Q. You go to the country how often?
A. Three or four times a year; perhaps oftener.
Q. For how long?
A. Sometimes for a week, and sometimes I would be gone for two weeks.
Q. You are putting your testimony on that experience only?
A. Yes.
Q. What is this (referring to samples), do you know?
A. Those are beans not matured; "string beans," as they are commonly called, a vegetable to be eaten green.
Q. But they are "beans"?
A. Yes; "string beans."
Q. Distinguished from other kinds of beans in part by that description? You call them "string beans"?
A. Or "beans in the pod."
Q. "Beans in the pod" or "string beans"?
A. Yes; picked off green, before they mature.
Q. They have not got the matured seed in them?
A. They would not reproduce anything if planted.
Q. They have to be cooked in order to be eaten, do they not?
A. Cooked or pickled. They are prepared.

Q. They have to be treated in some way in the kitchen?
A. Yes.
Q. And so with this sample No 4—they have to be treated in some way? They are not eatable in their present condition?
A. Yes; they have to be cooked.
Q. And it is so with sample 3, is it not?
A. I do not know so much about this. They make soup of this, I understand; lentil soup.
66 Q. You do not know so much about that?
A. No.
Q. You do not deal in that?
A. I never have.
Q. Do you deal any in the foreign article?
A. No, sir: in foreign hay and grain once in awhile, but not recently.
Q. You do not deal in the foreign articles represented by the samples 4 and 3?
A. No, sir; I never have.
Q. You never had any dealings in that particular commodity?
A. No, sir.
Q. You never imported any?
A. Never.
Q. Did I understand you to say that you dealt in wholesale in articles like sample 8?
A. No, sir.
Q. You do not deal in vegetables?
A. No, sir; only in this state—in beans in this state (referring to Exhibit 4).
Q. In that part of the vegetable?
A. That is all.

The defendant then called FREDERICK W. BRUGGERHOF, whose testimony tended to show as follows:

By defendant's counsel:

Q. What is your business?
A. Seeds.
Q. Of what house?
A. I am with J. M. Thorburn & Co., of 15 John street, New York.
Q. That is an old seed house?
A. Yes.
Q. Are you acquainted in your trade with and article known as "seed beans"—beans for planting?
A. Yes; we deal in them.
Q. I mean such as are sold for seeds?
A. Yes.
Q. Tell us how those seed beans are prepared for the purpose of propagation.
A. They are grown like any other bean that might be used for other purposes except that they are kept distinct. There are a great many varieties; we have some sixty kinds in our catalogue, and

of course it is necessary for them to be kept quite distinct and separate and they are grown in that way.

Q. Each variety is carefully kept separate by itself and planted?

A. Yes.

Q. You make contracts with farmers—staple contracts for seed beans?

67 A. Yes; with farmers and growers of those beans.

Q. Are beans used for seeds handled in a more thorough manner than the ordinary beans used for purposes of food?

A. Yes; it is necessary to do so in order to get the price for them as seed beans.

Q. They have to be carefully selected?

A. Yes.

Q. And the imperfect ones taken out?

A. Yes.

Q. And the discolored ones have to be cleared out?

A. Yes; in order to make them a merchantable bean for seed purposes. The age of the bean affects its selling qualities for seed. As fresh beans, or beans grown in the same year in which it is sold, it has a fresh appearance, which gives it more value on that account. Although beans that have been kept for two or three years may grow quite as well, yet they will show their age, and hence will not bring the price. Beans used for seed generally command a better price than beans intended for food purposes, although that is not the rule. They generally do bring a better price, and they are as a general thing better in merchantable appearance. Beans used for seed must contain the active germinating property or they would not grow. If kiln-dried, that destroys the germinating property.

Q. Do you have any beans in your establishment or has it happened in your experience that they become aged, discolored, or anything of that kind; and, if so, what is done with them?

Objected to as immaterial. Question allowed. Exception by plaintiffs' counsel.

A. We have not recently, but we have sometimes sold quantities of old beans to produce dealers for food purposes.

Cross-examination by plaintiffs' counsel:

Q. I understood you to say that there were some sixty dif-
68 ferent kinds of these bean seeds?

A. In our catalogue there are more.

Q. Do you mean that there are sixty in your catalogue?

A. Yes; there are a great many more, really.

Q. Have you one of your catalogues here?

A. Unfortunately I have not.

Q. You said that they had to be handled very carefully in order to get a good price?

A. Yes; and the imperfect beans, as a rule, picked out.

Q. Is not that the general commercial experience with everybody, that articles have to be handled carefully and carefully picked to get better prices?

A. Undoubtedly.

Q. And it is so in your business, is it not?

A. Yes.

Q. Now, about the age, do you mean to say that at the end of any definite period which you could fix the germinating principle is lost?

A. No.

Q. You do not mean that?

A. No. For instance, this season bean grown in 1890, in New York State (where many are grown), are very imperfect, owing to late rains; they have not become as perfect in their growth as usual. Those beans may grow now, and in three or four months from now they would not grow, having entirely lost their germinating property, whereas beans which are solid and perfectly matured may be kept for five years and still germinate. There is no rule as to the length of time that beans will keep. It depends upon the quality, in the first instance, and afterwards upon the manner in which they are kept—upon the conditions of temperature, dampness, dryness, and all that, as they have an effect upon beans. They are sold by the bushel, although sixty pounds has been called a bushel. They are sold by measure, but there is a standard weight of sixty pounds for a bushel. They are sold by the bushel, but a bushel has
69 a standard weight of sixty pounds.

Q. That is the way you sell them?

A. Yes.

Q. That is the way everybody sells them?

A. Except where they are sold at retail, and there they are measured by the quart or pint.

Q. I am speaking of wholesale dealers. Both the imported and domestic articles are sold in that way?

A. I do not know much about the imported beans. There are very few seed beans imported. I am talking about domestic beans.

Q. Don't you deal in the imported beans?

A. We have a few special kinds that are imported. The English beans are not adapted to our climate. You have seen those large English beans, perhaps; they are called the Windsor.

Q. Do you sell such things as these, Exhibit 4?

A. This is a white bean, but I do not know of what variety.

Q. Are they the seed?

A. They are seed, undoubtedly.

Q. Do you sell such things?

A. We have white beans, but whether we have this variety or not I cannot judge from appearance. There are many white beans that look alike, but yet are entirely distinct in growth, in shape, and style of pods. Some might grow on poles, others might have a round pod, others a flat pod, and yet you could not discover that by the bean itself—that is, you cannot always; you can in some cases; some have distinct marks.

Q. You mean to say that there are many varieties of seed of the white bean, but that you cannot tell from the beans themselves what sort of a bean they will produce. Is that what you mean to say?

A. Yes.

Q. You sell those varieties—a great many of them?

A. Of the white bean; yes; and of the white kidneys, and the marrow. Those you can judge by the appearance.

70 Q. Is that one of the things you sell? Did that come from your house?

A. It is one of our bags. That looks like a white kidney bean about a year old. It would be a growth older than 1890. I can generally tell the age by looking at it—not the exact age—but you can tell whether it is a new bean or not. That is a different bean from sample 4.

Q. What is the difference?

A. That is a white kidney bean; this I do not know.

Q. You say that this, which comes from your house, you do know?

A. I think it comes from our house. This is our guide, and I believe it is the white kidney: it might have points of resemblance and yet have some other name. Sample 4 is not the white kidney.

Q. Does this (showing another sample) come from your house; if so, can you tell what that is?

A. The bag does. It looks like the bean which is written on the outside of it "the extra early May."

Q. Do either of those correspond with No. 4?

A. No.

Q. Do they correspond with No. 8?

A. I could not tell.

Q. Can you tell whether they would produce it or not?

A. I could not.

Q. Do they correspond with 5, 6, and 7?

A. That is impossible to tell, in that condition.

Q. You could not tell that?

A. No.

Q. You cannot tell from looking at the kernel itself what the kind will be?

A. You can in some instances.

Q. You cannot in these instances? You cannot tell in the case of Exhibit 4?

A. No; I cannot.

Defendant's counsel:

Q. Do you know anything about lentils?

A. I know that there is such an article. We do not import them. We have them in the catalogue, and occasionally have orders

71 for them and we purchase them.

Q. Are they ever sold as seeds by the seedmen of this count-y?

A. To a very small extent.

Q. You say that very few beans are imported for seed?

A. Very few.

Plaintiffs' counsel:

Q. How do you know that?

A. As a business man knows all about his own business; there are comparatively few seeds imported. I had occasion to look into

that. There are comparatively few seeds imported as compared with other articles of merchandise.

Q. As compared with the quantities of seeds that are dealt in by large houses such as yours, Henderson's, and others? What I ask you is this, is it not your experience that the quantity of seeds which are dealt in at wholesale by large houses is very large in respect to seeds of home production and very small comparatively with respect to seeds that are imported?

A. The proportion of seeds we import is much smaller than those that are grown here. Yes, it is smaller.

Q. You say that when you have an order for these lentils you have to buy them to fill the order?

A. Only occasionally. I don't think we have had an order this season for them.

Q. Where do you go to buy them?

A. We buy them of some of the produce dealers who import those things for soup purposes.

The defendant then called ALEXANDER FORBES, whose testimony tended to show as follows:

Defendant's counsel:

Q. What is your business?

A. Seedsman.

Q. What firm?

A. Peter Henderson & Co., in Cortlandt street, in this city. I am familiar with the article of seed beans.

Q. With the white bean?

A. With various kinds of white beans.

Q. Is there any special preparation in the production of beans for seed?

72 A. Yes; we usually make contracts with farmers to grow what we require from seed which we furnish—special kinds.

Q. Is extra care taken in the cultivation?

A. Certainly. The varieties are kept separate. That lies at the root of the whole business.

Q. From your experience in business, would any seedsman buy or sell such articles as are shown by Exhibit 4 as seed for beans?

Objected to as immaterial, irrelevant, and incompetent.

Question allowed. Exception by plaintiffs' counsel.

A. Some seedsmen might.

Q. I mean reputable seedsmen?

A. I can answer for ourselves. We would not buy them for seed purposes. Seed beans which are raised for propagation bring higher prices than beans raised for food; their appearance, quality, and all that to some extent would regulate their value.

Q. Do seeds which have been dried by certain processes retain their germinating property?

A. Kiln-dried seed is not desirable. It all depends upon to what extent they are kiln-dried. There is kiln-drying and kiln-drying.

Cross-examination by plaintiffs' counsel:

Q. You raise your seeds, do you not? I mean Peter Henderson & Co. raise the seeds they sell?

A. Yes. They do not usually buy any of the seeds they sell; they do sometimes, but not usually. Their business is to raise the seeds or to have them raised for them and to sell them as the result of their own contracts for their production.

Q. You only buy in order to fill an exceptional order? Is that so?

A. Some things we would not buy—the things that we can tell by distinctive marks. Take beans, for instance. Some beans
73 we would buy because they have distinctive marks that we can tell them by—whether they are right and pure; but the white bean does not come under that category. We could not buy that and be sure of it, and that might hurt our reputation. As to the white beans, we could not tell from an examination of the seed. It is a safe business principle to know the history of the production of the seeds we sell; that is everything—that is, with the seeds of the bean not more so than with many other things. Peas are equally important; it is more important still in beet seeds and in cabbage seed. We do not sell the lentil seed. We do catalogue them. They are an article which we as seedsmen have very little inquiry for.

Q. Do you know if they are produced largely in any particular part of the country?

A. I am not aware of it. I have never seen them growing. I have never found a crop of lentils.

Q. Can you tell from an inspection of articles whether they are seeds or not?

A. In the dry or in the green state, do you mean?

Q. Yes.

A. They are all vegetables.

Q. Can you tell from an inspection of an article whether they are seeds or not? Can you tell when you see an article whether it is a seed or not?

A. What do you mean by "seeds"? Do you mean seeds that will germinate or seeds that are simply grown for the purposes of consumption?

Q. You raise bean seed, do you not?

A. Yes, in large quantities. I would not say that we are one of the largest raisers in the country, but we raise a considerable quantity. The Landredths might be larger raisers; that I cannot say. They might be. It is a question. We are among the largest.

Q. Do I understand you to say that you have catalogues of seeds?

74 A. Yes; the seeds of beans are generally the second article in the list.

Q. Is this one of your catalogues?

A. Yes. That is our 1890 catalogue. Articles of this class that we are asking about you will find at pages 5, 6, 18, and 19 in that list. They are referred to in the index.

Q. And under different heads?

A. Of different classes.

Q. It is under the head of the first column, is it not?

A. That is the index to the whole book. The first column of the index to the books relates to this topic, and that is under the head of vegetable seeds.

Q. Now, where do these come under that head? What are they called there?

A. "Beans—bush beans or pole beans." They are classified there under "beans." If you go to each page you will find them further classified under different heads, such as "wax beans," "pole beans," "bush beans," "lima beans," &c. That is so in this index and the pages give still further details. There are several "white beans," but I do not think that catalogue has any white medium beans in it. We sometimes deal in them; also white kidney beans, white marrow beans. They are different species of the same general botanical class. They are all seeds.

Q. Does this sample come from your house? Can you tell that?

A. It has all the appearance of it, but I could better have told if it had not been opened. They might have. I will not say that they are not. They are in a bag which come from our establishments. The commodity inside is a kind of commodity that we deal in. That is one of the kinds. It is a large white kidney bean, or "white kidneys," in other words. They are not at all the same as those in sample 4 bag; they are a smaller bean in the
75 grain. These beans seem to be mixed. There are different kinds in there. There are not any like those in package No. 4.

Q. Is it correct for me to call those kernels?

A. It is immaterial. The kernel is inside of the grain.

Q. Excepting the differences in variety of these grains in sample 4, what other difference, if any, are there between that and this sample just shown you?

A. There is no great difference otherwise, because they are all the same color. They belong to the same general class of commodities; they are both beans and both white beans.

(The catalogue of Peter Henderson & Co. was then received in evidence and marked Exhibit 16. It is sufficiently described in the testimony.)

Plaintiffs' counsel:

Q. Is it your experience that you can tell by an inspection of the seed itself what the produce will be?

A. I could not tell.

Defendant's counsel:

Q. And that is the reason you have to have them carefully planted and the varieties kept separate?

A. Exactly.

Defendant's counsel offers in evidence the following decisions of the Treasury Department: A decision dated May 11, 1866 (without

number), addressed to the collector of customs at Sandusky, Ohio, as follows:

TREASURY DEPARTMENT, *May 11, 1866.*

SIR: Your communication of the 8th instant is received, in relation to the tariff to be collected on "white beans." In reply thereto I would respectfully state that I am of opinion that the beans in question should be classified as "vegetables not otherwise provided for," and duty be accordingly assessed at the rate of 10 per cent. ad valorem.

I am, very respectfully, J. F. HARTLEY,
Assistant Secretary of the Treasury.

76 No. 76, of April 6, 1868, as follows:

Pease when sold or used for domestic purposes are dutiable as "vegetables," &c., under section 19, act of March 2, 1861, at 10 per cent. ad valorem. If intended for use as seed they should be classed under the clause of section 8 of the act of July 14, 1862, providing for "garden seeds and all other seeds for agricultural or horticultural purposes" a duty of 30 per cent. ad valorem. The use to which imported peas are to be applied is to be determined by the collector, according to instructions of May 8 and 10, 1867.

(Letter to collector, Buffalo, N. Y., April 6, 1868.)

No. 6948, as follows:

TREASURY DEPARTMENT, *June 1, 1885.*

SIR: The department is in receipt of a letter from the United States attorney for the southern district of New York, dated the 13th ultimo, further relating to the trial of the suit (N. S. 9295) of Windmuller *et al.* against Robertson, which involved the question as to the classification under the tariff acts of imported edible beans.

The verdict in the case sustained one of the claims of the plaintiffs, and holds that edible beans are subject to a duty of 10 per cent. ad valorem, under the provision in Schedule G, T. I., new, 286, for "vegetables in their natural state * * * not specially enumerated or provided for."

The matter has been referred to the solicitor of the Treasury and the United States Attorney General, and both of these officers advise that the result of the trial be acquiesced in.

77 You are therefore directed to take the necessary steps for the payment of the judgment in the said case, when it shall be entered of record, and also for the settlement of all other similar suits now pending at your port, where the requirements of law as to protest, appeal, institution of suit, &c., have been fully complied with.

You will also apply the decision to all unliquidated entries, as well as to future importations of such merchandise. Care will be taken to see that these instructions are only applied to cases where the protest or appeal is sufficient and claims 10 per cent. ad valorem to be the rate of duty, as decided by the court.

Edible pease are considered as being embraced within the same category as beans, and you will therefore consider these instructions as also applying to that commodity.

Very respectfully, DANIEL MANNING, *Secretary.*

Collector of customs, New York.

No. 7914, as follows:

TREASURY DEPARTMENT, *December 9, 1886.*

SIR: Referring to department's instructions of June 1, 1885 (synopsis 6948), which were issued to carry into effect the decision of the court in the case of Windmuller *vs.* Roelker, concerning the classification under the tariff acts of edible beans, and in which it was also prescribed that edible pease should be considered as being embraced in the same category as beans and be classified under the provision in Schedule G (T. I., new, 286) for "vegetables in their natural state * * * not specially enumerated or provided for," at a duty of 10 per cent. ad valorem, you are informed that the department is now in receipt of a communication from the United States attorney for the northern district of New York, dated the 24th ultimo, in which he reports the trial of the case of the A. B. Cleveland Company against G. W. Warren, collector of customs, which involved the question as to the proper classification of imported pease, and that such report shows that the decision in the suit last mentioned sustained the ruling of the department, the court having charged the jury as follows: "It seems, therefore, to be entirely clear that the defendant properly classified the importations in question as vegetables, and that they were subject to the duty of ten per centum ad valorem," and the jury having returned a verdict for the defendant.

Respectfully yours, C. S. FAIRCHILD,
Acting Secretary.

Collector of customs, New York.

78 No. 8004, as follows:

TREASURY DEPARTMENT, *January 22, 1887.*

SIR: The department is in receipt of your letter of the 19th instant, transmitting the appeal (83*p*) of Mr. Henry Knefely from your decision assessing duty at the rate of 10 per cent. ad valorem on certain "lentils," classified by you as "vegetables in their natural state," (Schedule G, T. I., new, 286), imported by him into your port, per "Donau," from Bremen, and entered for consumption September 29, 1886, and claimed by the appellant to be free of duty under the provision in the free list (T. I., new, 760) for "seeds of all kinds, except medicinal seeds, not specially enumerated or provided for in this act."

Under date of June 1, 1885, (synopsis 6948), the department decided that edible beans and pease are dutiable at the rate of 10 per cent. ad valorem, under the provision in paragraph 286 (Schedule G), act of March 3, 1883, for "vegetables in their natural state," and on the 28th of April, 1886, by letter addressed to the collector of customs at New York, it was held that the principle enunciated in

said decision was applicable to lentils, which are a species of edible pease.

Your assessment of duty as aforesaid is hereby affirmed.

Respectfully yours, C. S. FAIRCHILD,
Assistant Secretary.

Collector of customs, Baltimore, Md.

No. 8131, as follows:

TREASURY DEPARTMENT, *March 23, 1887.*

The following provisions of the act of March 3, 1883, and citations of rulings of the department thereunder regarding the classification for duty of imported seeds, &c., are published for the information and guidance of customs officers and others concerned:

Par. 94. All barks, beans, berries, balsams, buds, bulbs, and bulbous roots and excrescences, such as nut-galls, fruits, flowers, dried fibers, grains, gums, and gum-resins, herbs, leaves, lichens, mosses, nuts, roots, and stems, spices, vegetables, seeds (aromatic, not garden seeds), and seeds of morbid growth, weeds, woods used expressly for dyeing, and dried insects, any of the foregoing of which are not edible, but which have been advanced in value or condition by refining or grinding or by other process of manufacture and not specially enumerated or provided for in this act, ten per centum ad valorem.

Par. 259. Wheat, twenty cents per bushel.

Par. 260. Rye and barley, ten cents per bushel.

Par. 263. Indian corn or maize, ten cents per bushel.

Par. 264. Oats, ten cents per bushel.

Par. 285. Potatoes, fifteen cents per bushel of sixty pounds.

Par. 286. Vegetables in their natural state or in salt or
79 brine, not specially enumerated or provided for in this act, ten per centum ad valorem.

Par. 452. Hemp seed and rape seed, and other oil seeds of like character, other than linseed or flaxseed, one-quarter of one cent per pound.

Par. 465. Garden seeds, except seed of the sugar-beet, twenty per centum ad valorem.

Par. 466. Linseed or flaxseed, twenty cents per bushel of fifty-six pounds, but no drawback shall be allowed on oil-cake made from imported seed.

The Free List.

SECTION 2503. The following articles when imported shall be exempt from duty:

Par. 636. Drugs, barks, beans, berries, balsams, buds, bulbs, and bulbous roots, excrescences, such as nut-galls, fruits, flowers, dried fibers, grains, gums and gum-resins, herbs, leaves, lichens, mosses, nuts, roots, and stems, spices, vegetables, seeds, aromatic, and seeds of morbid growth; weeds, woods used expressly for dyeing, and dried insects, any of the foregoing of which are not edible and are in a crude state, and not advanced in value or condition by refining or grinding, or by other process of manufacture, and not specially enumerated or provided for in this act.

Par. 760. Plants, trees, shrubs, and vines of all kinds, not otherwise provided for, and seeds of all kinds, except medicinal seeds, not specially enumerated or provided for in this act.

Par. 761. Plants, trees, shrubs, roots, seed-cane, and seeds imported by the Department of Agriculture or the United States Botanical Garden.

Par. 778. Seed of the sugar-beet.

The following are the synoptical numbers of the rulings of this department under the above provisions: 5864, 5895, 5897, 5985, 6046, 6093, 6156, 6164, 6221, 6227, 6241, 6273, 6342, 6608, 6635, 6948, 7107, 7138, 7259, 7313, 7828, 7914, and 8004.

Garden Seeds.

Under these and sundry unpublished decisions of the department the following seeds are now held to be dutiable as "garden seeds," at the rate of 20 per cent. ad valorem, under the provision therefor in Schedule N, T. I. 465

Artichoke,
Asparagus,
Balm,
Beans (not edible),
Beets (not sugar-beet),
Borage,
Broccoli,
Brussels sprout,
Cabbage,
Carrot,
Cauliflower,
Celeriac,
Celery,
Chevil,
Chicory,
Chive,
Collard,
Coriander,
Corn-salad,
Cress,
Cucumbers,
Dandelion,
Egg-plant,
Endive,
Hyssop,
Kale,
Kohl-rabi,
Lavender,
Leek,
Lettuce,
Marjoram,
Martynia proboscidia,
Melon,
Mushroom-spawn,
Nasturtium,
Okra,
Onion,
Parsley,
Parsnips,
Pease (not edible).
Pepper,
Radish,
Rhubarb,
Rosemary,
Rue,
Saffron,
Sage,
Salsify,
Savory,
Scorzonera,
Sea-kale,
Shalot,
Sorrel,
Spinach,
Squash,
Swiss-chard,
Thyme,
Tomato,
Vegetable-marrow.

Vegetables.

Beans (edible), synopsis 6948; pease (edible), synopsis 7914, and lentils, synopsis 8004, have been held to be dutiable at the rate of 10 per cent. ad valorem under the provision in Schedule G, T. I. 286, for vegetables in their natural state.

Oil Seeds.

Maw, or poppy, and cotton seed have been held to be dutiable at the rate of $\frac{1}{2}$ of 1 cent per pound under T. I. 452 (synopses 7828, 5895).

Agricultural Seeds.

Flower (synopsis 5985), grass (synopsis 5864), mangel-wurzel (synopsis 7313), turnip (synopsis 7313), and pumpion (pumpkin) (synopsis 7259) seeds have been held to be free of duty under the provision in the free list, T. I. 760, for "seeds of all kinds, except medicinal seeds."

Aromatic Seeds.

Hoarhound seeds have been held to be free of duty as "aromatic seeds," under the provision therefor in T. I. 636.

C. S. FAIRCHILD,
Acting Secretary.

To officers of the customs and others.

Plaintiffs' counsel offers in evidence decisions of the Treasury Department Nos. 6046, 6273, and 6608, as follows:

81 No. 6046.

TREASURY DEPARTMENT, *November 27, 1883.*

SIR: The department is in receipt of your letter of the 20th instant, submitting the appeal (12287) of Messrs. Chase Brothers from your assessment of duty at the rate of 20 per cent. ad valorem on certain pease imported, per steamer "Norseman," from Canada.

You classified the merchandise at the rate of duty before specified under Schedule N, paragraph 465, of the tariff act of March 3, 1883, for garden seeds.

It seems to be conceded that the pease referred to were imported as seeds, and not for consumption as vegetables, and the question presented is whether they are garden seeds. The general and not the exceptional use must determine the classification of the article. As a rule, pease, beans, and many other vegetable products are more largely sown in the field or farm than in the garden, although some varieties may be specially adapted for garden planting.

It is held by the department that all pease and beans imported for seed are entitled to free admission under the provision in the free list, paragraph 760, for seeds of all kinds not specially enumerated or provided for in that act. You can readjust the entry accordingly and cause your practice to conform to this ruling.

I may add, for your further information, that the department regards seeds, such as barley, beans, beets, carrots, cabbage, clover, corn, cane, grass, mangel-wurzel, oats, onions, potatoes, pumpkins, rye, tobacco, turnip, wheat, and other like products, as belonging to the category of agricultural seeds which are not garden seeds, and that seeds of the artichoke, asparagus, borecole, Brussels sprouts, cauliflower, celery, cucumber, egg plant, lettuce, leek, okra, parsley, pepper, rhubarb, radish, salsify, and tomato belonging to the category of garden seeds.

It is impossible to enumerate all the seeds which belong to either

of these divisions in detail, and the above is given for information as to the principle upon which collectors of customs must act.

Other cases will be disposed of as they arrive.

Very respectfully, H. F. FRENCH,
Acting Secretary.

Collector of customs, Rochester, N. Y.

No. 6273.

TREASURY DEPARTMENT, *March 28, 1884.*

SIR. The department duly received your letter of the 3rd instant, submitting the appeals (4565*i* and 4566*i*) of Messrs. D. Landreth & Son from your assessment of duty at the rate of 20 per cent. ad valorem on certain beans imported per "Illinois" February 13, and "Vaderland" February 25, 1884.

82

Duties were assessed under paragraph 465 of the tariff of March 3, 1883, which imposes a duty of 20 per cent. ad valorem on "garden seeds, except seed of the sugar-beet."

The appellants claim that the merchandise is free of duty under paragraph 760 of the free list, for seeds of all kinds, except medicinal seeds not specially enumerated or provided for in that act.

Reference is made in the papers to decision No. 6046, of November 27, 1883, in which it was stated that the department regard seeds such as pease and beans and some others therein mentioned as belonging to the category of agricultural seeds which are not garden seeds.

The Secretary has deemed it proper to review the whole question in the light of the information now before the department, and the following is his opinion upon the classification of seed beans, which are the subject of the present appeals:

The appellants brought in by the steamship "Vaderland" a quantity of "beans." They made a like importation by the steamship "Illinois." There is no more specific description in the papers of the imported article than that given above, viz., "beans."

I infer that they are some variety of the seed of the bean plant or vegetable grown in gardens and fields and intended for food or for planting or sowing.

Beans are spoken of by that name in but three places in the tariff act: T. I., new, pars. 94, 636, and 808. Not one of those paragraphs touches the article now in consideration. Paragraphs 94 and 636 speak of beans not edible, while this article is edible. Paragraph 808 speaks specifically of Tonquin, Tonqua, or Tonka beans, and they are not this article.

These goods not being spoken of by name in the tariff act, they are not specifically enumerated or specifically provided for thereby.

Are they affected by the tariff law by other language therein than that of specific mention? Consider that when framing the tariff act of 1883 Congress did, to some extent, provide in terms for beans by that name. In doing so it made a distinction between those edible and those not edible, and admitted the latter free of duty. It is plain, then, that it had in mind beans edible and beans not edible,

and appreciated and meant to state a distinction. When, then, it made an express provision for one kind by mention of it, does not the maxim apply *expressio unius, exclusio alterius?* Having by express provision suffered to come in free of duty the beans not edible, is not the inference strong that it did not mean to admit free of duty the beans edible, and that it meant to provide for them in some other part of the act?

That law speaks of vegetables. But beans of the kind *are* in the form of the article in consideration, as an article of commerce, are not vegetables. They are the seeds of the bean plant, which latter is a vegetable; so paragraphs 286, 287, and 636, where mention is made of vegetables, do not apply.

83 As these beans are seeds, what does the tariff law say of seeds? Seeds are spoken of by that name in T. I., new, in five places—paragraphs 94, 636, 760, 761, 465. Paragraphs 94 and 636 do not apply to this article of seeds, for these are edible. Paragraphs 760 and 761 use words broad enough to take this article in, unless it is more particularly provided for in another part of the tariff act. If there is any other part that does so, it is paragraph 465, which says, "Garden seeds, except seed of the sugar-beet, twenty per centum ad valorem."

In common speech, garden seeds are seeds used either for planting or sowing in the gardens adjacent to dwelling-houses, small spaces of land, and in the larger spaces of land called market gardens, lying about cities or other large places of numerous and condensed population. The common notion of garden seeds is this, that they are those seeds from which are raised, in the growing season of the year, the vegetable products which, before complete maturity, are used upon the table as part of the customary food of mankind, and in distinction from those seeds which, sowed or planted on a broader scale in the fields, produce the vegetables which are stored for winter use as food. Yet it is to be taken note of that by extended field culture there is produced much of the seed which finds its way to market and to sale as garden seeds in the common notion thereof above stated. It is not easy, therefore, to say of any importation, on general principles, that it is of garden seeds or of field seeds, nor to frame a rule on general principles and general knowledge which will always exactly apply. We are constrained, therefore, to see if we can by interpretation get at the purpose of Congress, and if it did not intend to charge the phrase "garden seeds," in paragraph 465, with arbitrary meaning. It has made an exception of the seed of one vegetable from the general expression "garden seeds." It must have been thought by Congress that there was need of that exception, *are* that else the seed excepted would properly and necessarily be treated by the administrative officers of the Government as garden seeds. It follows, then, that Congress thought that seeds like the seed of the sugar-beet were garden seeds. We have, then, an idea of what kind of seeds Congress meant when it spoke the phrase "garden seeds." Now, the sugar-beet is not a plant or a vegetable exclusively, nor mostly of the growth of gardens. It is, on the contrary, mostly the growth of the field or of the market garden. If the

sugar-beet is in the view of Congress a garden plant or vegetable as well as or in contrast with a field plant, and its seed garden seed as well as or in contrast with field seed, surely the bean is in legislative contemplation a garden plant or vegetable, and the bean of the market, which is the seed of the bean plant, is the garden seed as well as or rather than a field seed. We know that in fact the bean, as a seed of the bean plant or vegetable, is planted in the garden and is largely planted in the field also; in the former case, generally, to be eaten green in the pod, as a green esculent, though sometimes, as with lima beans, in the form of the seed of the plant; in
84 the latter case for the production of seed for subsequent planting, and for food in the form of the matured seed. It is to be noticed, too, that elsewhere in the act when garden seeds are mentioned they are so in contrast or opposition to seeds which are not of the character of beans or other seeds used for sowing or planting both in field and garden, as in paragraph 94, where the phrase is "seeds, aromatic, not garden seeds," and "seeds of morbid growth;" and so in paragraph 636 the seeds put in the free list are "seeds, aromatic, and seeds of morbid growth."

As the beans are garden seeds in some of the uses of them, and as it is to be got by interpretation that Congress meant to include such seeds as that of the bean in the phrase "garden seeds," in paragraph 465, the conclusion must be that the article under consideration is properly classified under paragraph 465 (T. I., new).

This ruling applies equally to pease, and the duty of 20 per cent. ad valorem will, therefore, be exacted on both on entries of such merchandise.

Your decision assessing duty as aforesaid on the goods covered by said appeals is hereby affirmed.

Very respectfully, H. F. FRENCH,
Assistant Secretary.

Collector of customs, Philadelphia, Pa.

No. 6608.

TREASURY DEPARTMENT, *October 21, 1884.*

SIR: The department is in receipt of your letter of the 20th instant in regard to the proper classification of lentils imported by Henry Eggers.

The question arose upon a difference of opinion between the naval office and your office. The naval office held that the articles were not seeds, but were dutiable as vegetables, under paragraph 286, at 10 per cent. ad valorem. This view was based partly upon the fact that prior to the act of March 3, 1883, such merchandise was classed as vegetables, and not as seeds, and also from the fact that these articles being edible they are excluded from the free list, because paragraph 636 excepts therefrom vegetables and seeds which are edible, and that paragraph 760, for seeds of all kinds except medicinal seeds not otherwise provided for, refers only to such articles as are intended to be replanted in this country.

Lentils as commonly imported are seeds of a vegetable. In the American Cyclopædia (volume 10, p. 79) lentils are described as an esculent seed of the pea family, and it is stated that the plant bears pods containing from one to four round, flattened, doubly convex seeds; that the cultivation of the lentils is very similar to that of the pea, requiring a dry, warm, sandy soil, and that it is sown early in May, broadcast, if intended merely for fodder, but in drills when the ripe seeds are desired.

The appraiser reports that the articles forming this importation are the seeds of the lentil plants, and that they are not garden
85 seeds, not being generally sown in gardens, but are field seeds, and so fall into the classification in the provision in paragraph 760 for seeds of all kinds not otherwise provided for which are free of duty. That they are seeds, and not vegetables, is shown by decision 6273, regarding duty on beans and pease, which states that beans of the kind or in the form of the article then under consideration, as an article of commerce, are not vegetables, but they are the seeds of the bean plant, which latter is a vegetable. Whether seeds of the character in question are intended for use as an article of food or for planting purposes does not control the question of their classification. They are still to be classed as seeds, regardless of the purposes for which intended.

Paragraph 636 excepts these from edible seeds of the kind therein provided for, but, so far as concerns seeds, it only includes aromatic seeds and seeds of morbid growth, and lentil seeds are neither of these varieties, and so are not affected by that paragraph.

The department decides that lentil seeds are free of duty under paragraph 760.

You will take action accordingly.

Very respectfully, H. F. FRENCH,
Assistant Secretary.

Collector of customs, New York.

86 Defendant's counsel offered to read in evidence the definition of the word "vegetable" from Webster's Dictionary.

Plaintiffs' counsel objected to it.

The COURT: The objection is overruled.

To which ruling plaintiffs' counsel duly excepted.

DEFENDANT'S COUNSEL: Now I will read the definition: "Vegetable, n. (1) An organized body destitute of sense and voluntary motion, deriving its nourishment through pores on its outer surface or vessels in most instances adhering to some other body, as the earth, and in general propagating itself by seeds. Vegetables alone have the power of deriving nourishment from inorganic matter, or organic matter entirely decomposed. (2) In a more limited sense, a plant used for culinary purposes and cultivated in gardens, or destined for feeding cattle and sheep or other animals, as cabbage, cauliflower, turnips, potatoes, peas, beans, and the like."

I will also read the definition of the word "seed." "Seed: The embryo, with its envelop or envelops, or the matured ovule, the growth of which gives origin to a new plant, as an apple seed, a currant seed.

"Several seeds often combine to form the fruit, as in the blackberry, the raspberry, and the like. The seed has an outer and an inner coat, and within these the kernel or nucleus. The kernel is either the embryo alone or the embryo closed in the albumen, which is the material for the nourishment of the developing embryo. The scar on a seed, left where the stem parted from it, is called the hilum and the closed orifice of the ovule the micropyle." (3) That
87 from which anything springs; first principle; original, as the seeds of virtue or vice. "4. The principle of production. "Praise of great acts he scatters seeds." Also the definition of the word "culinary."

"Culinary, a. Relating to the kitchen or to the art of cookery; used in kitchens, as a culinary fire, a culinary vessel, culinary herbs."

The foregoing comprised all the testimony adduced by either party, and the evidence was closed.

Defendant's counsel moved for a direction of verdict in favor of the defendant on the grounds: (1) That the plaintiffs have not shown facts sufficient to entitle them to recover. (2) That it appears from the uncontradicted evidence in this case that the words "vegetable" and "seed" have no different meaning in trade and commerce than in ordinary use; they are words of common speech, and their interpretation is a matter of law for the court. (3) That the Treasury Department ever since 1866 have classified beans and peas used for food as vegetables and subject to the vegetable duty, long prior to the act of 1883, and it must be presumed from the absence of the specific word "beans" in the tariff act of 1883 that edible beans were included in the general classification of vegetables. (4) That these articles have been judicially determined by the circuit court of the southern district of New York to be properly classified as vegetables in the case of Windmuller *v.* Robertson, in May, 1885, and also by the circuit court of the northern district of New York in the case of the A. B. Cleveland Co. *v.* Warren, November 24, 1886, and once more in the circuit — in the trial of the case of
88 Solomon *v.* Robertson in January, 1890. (5) That they have been judicially determined to be properly classified as vegetables by the United States Supreme Court in the case of Salomon *v.* Robertson (130 U. S. Reports, 412). (6) That "vegetables" are a more specific designation of "beans" than is the words "seeds," seeds not being confined at all to vegetables. (7) That it is shown by uncontradicted evidence in this case that the predominant use and the chief use of imported beans, such as those in suit, is for purposes of food, and there is no evidence in the case that any of the importations in suit were actually used as seed, or that they were imported for the purpose of being used as seed.

The presumption of law being that the collector was right in his classification and assessment of duty, the defendant is entitled to a

direction of verdict unless the plaintiff shows by positive testimony that the particular importations were actually imported for or were used as seed for purposes of propagation and not for their general and predominating use, for purposes of consumption.

The COURT: I will hear the other side.

PLAINTIFFS' COUNSEL: We oppose the motion made by the government to direct a verdict for the defendant, and we claim that we have a right to go to the jury upon the testimony in the case.

LACOMBE, *J.*:

I am unable to differentiate this case from the one which was before me not long ago, Salomon *v.* Robertson, 41 Fed. Rep., 516. There has been some additional commercial testimony here, but I do not see that it has altered the case, in view of 89 the distinction with regard to such testimony which was pointed out by the Supreme Court in the latter part of each decision in the case of Schneider *v.* Barney, 113 U. S. Such additional testimony does not deal in the commercial designations of the article, or what it is called in trade or commerce, or its name. It only tends to show how the trade witnesses think it should be classified. As to use, there is no contradiction in the testimony. All the witnesses agree that the predominant use of these articles, both the beans and the lentils, is for food. I shall therefore grant defendant's motion, with an exception to the plaintiffs and a stay of sixty days.

To the foregoing decision and ruling plaintiffs' counsel duly excepted.

Thereupon plaintiffs' counsel requested the court to send the case to the jury; which request was refused and plaintiffs' counsel duly excepted to such refusal.

Plaintiffs' counsel then submitted prayers for instruction and requested the court to instruct the jury as follows:

1. The articles in controversy, being seeds of the field bean and of the field lentil, are to be classified for revenue purposes under some one of the tariff provisions for seeds, unless this particular kind of seeds shall be found to be more specifically enumerated and provided for, as, for instance, by its specific name, or by some other more definite and exact description applicable specially to them.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

2. As matter of law, the jury will understand that there is 90 no specific enumeration by name or by terms of special description in the tariff that individually identifies or separates the particular commodity in question from and *and* all other commodities of the kind.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

3. It being in proof that various kinds of seeds are used for various purposes and have various individual names which aid in their

identification, the circumstances that the commodities in controversy are edible and are a staple article of food is not controlling.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

4. Nor does the fact that the articles are known as "beans" or "white beans" or "dried beans" or "lentils" withdraw them from the classification of seeds, if they are seeds.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

5. The evidence does not justify the jury in basing their determination of the classification in question exclusively with respect to the individual name of the particular article in question or exclusively with respect to its use, but they must determine the classification upon all of the testimony received.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

6. Although the commodities in question may be generally sold and dealt in under the simple designation of "lentils" or
91 "beans" or "white beans," that circumstance in itself does not solve the question as between the rival designations of seeds and vegetables.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

7. If the jury believe from the testimony that the articles in question are, in fact, the dried, matured seeds of the field bean or field lentil, then the commercial name of "bean" or "lentil" is not controlling.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

8. There is no specific adoption of these articles by the designation of "beans" or of "lentils" in the tariff, and that particular commercial name does not control their classification. It is enough to exempt them from duty if they are seeds (not medicinal) irrespective of their use or of their specific name, because such "seeds" are not elsewhere specifically enumerated or provided for.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

9. There being testimony tending to show that there exist commodities besides those in question that are called beans, which beans are not seeds, the name "beans" does not, as a matter of law, solve the question as between the rival designations of seeds and vegetables.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

10. The mere fact that the seeds of the field bean or field lentil are edible does not take them out of the free list. An article
92 may be edible like the seed of the field bean and yet be classified as seeds and also be exempt from duty under the free list.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

11. As to what are "vegetables" and what are the seeds of vegetables, there is testimony tending to show that the commercial usage accords with the common and general acceptation of those terms.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

12. The testimony in this case from commercial men agrees with our common knowledge, according to which, unless the article in question belongs to the class of commodities described as "vegetables in their natural state," then they are to be classified as seeds not medicinal.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

13. If the jury believe from the testimony that "vegetables" are the edible roots or tops of plants, as distinguished from their dried, matured seeds, then they will find a verdict for the plaintiff.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

14. In order to support the claim of the Government that the articles in question are dutiable at ten per cent. as "vegetables in their natural state," the jury must be satisfied from evidence that the articles are in their natural state and are in truth the vegetable itself as distinguished from its seed, otherwise they will find
93 against the Government on that claim.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

15. To be dutiable as "vegetables" the commodities must in fact be "vegetables" as distinguished from seed; they must be something else besides the seeds of vegetables or they are exempt.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

16. When a noun of common language is found frequently in the phrases of the tariff as "seeds" are found, the obvious and ordinary meaning of that term is not to be disregarded unless clearly so intended by Congress, and that intention, in the absence of language evincing it, will not be presumed.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

17. The presumption is that tariff terms of general description are to be applied in their ordinary acceptation until it is shown that they have a distinguishable trade meaning, and in this case there is no sufficient evidence to warrant the conclusion that no commodity is a seed unless it is one that is to be used for propagation.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

18. The testimony of the opinion of seedsmen is not of itself controlling, and seeds, being mentioned many times in the tariff, must be interpreted to include within the term "seeds" all the articles which, according to the correct use of language, are included
94 within that term, irrespective of the use of the particular seed mentioned.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

19. If it is contended by the Government that the term "seed" has a special commercial meaning and is a term of peculiar commercial designation, then this must be shown by a fair preponderance of evidence; else, being "seeds," the commodities in question remain exempt from duty.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

20. One of the important questions in this case is, which is the more definite and particular description of the class of commodities to which the articles in question belong, namely, the class of "seeds" or the class of "vegetables," because the more specific designation prevails; so that if the jury believe from the testimony that the articles in question are more specifically described under the generic term "seeds" than under the generic term "vegetables in their natural state," their verdict will be for the plaintiffs.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

21. It is for the jury to say whether the seeds of vegetables are parts of the vegetables or constitute themselves the vegetables; and if the commodities in question are only part of the "vegetables in their natural state," as distinguished from the entire commodities "vegetables in their natural state," then, if they are only part and not the whole, they are more specifically enumerated under the term "seeds."

95 The court refused so to instruct the jury and plaintiffs' — duly excepted to such refusal.

22. To justify a verdict for the Government the jury must conclude upon the testimony that the articles in question are not "seeds" within the rules stated by the court, otherwise they will find a verdict for the plaintiffs.

The court refused so to instruct the jury and plaintiffs' counsel duly excepted to such refusal.

The foregoing exceptions having been duly taken as aforesaid and allowed, the court, in accordance with its opinion expressed as above stated, directed the jury to find a verdict for the defendant, and to this direction plaintiffs' counsel duly excepted.

The jury accordingly, pursuant to the said direction, rendered a verdict for the defendant.

And inasmuch as the foregoing matters of fact and law and the said several exceptions do not appear by the judgment record in this case, therefore, on the prayer of the plaintiffs' counsel, the foregoing has been settled and signed by the judge who tried the same as and for the bill of exceptions in this cause at the aforesaid term of said court and directed the same to be filed as of the 15th day of January, 1891, the day of the verdict aforesaid.

Witness my hand. E. HENRY LACOMBE.

96 (Endorsed:) United States circuit court, southern district of New York. Hyman Sonn and Hermann Sonn *vs.* Daniel

Magone, collector, &c. Bill of plaintiffs' exceptions. Nordlinger & Rapp, plaintiffs' att'ys, 167 Broadway, N. Y. city. A copy of the within paper has been this day received at this office. Mar. 14, 1891. Edward Mitchell, U. S. attorney. U. S. circuit court. Filed Mar. 26, 1891, *nunc pro tunc* as of Jan'y 15, 1891. John A. Shields, clerk.

97 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

HYMAN SONN and HERMANN SONN
vs.
DANIEL MAGONE, Collector of the Port of New York. } Bond for Damages and Costs.

Know all men by these presents that we, Henry E. Tremain and Mason W. Tyler, are held and firmly bound unto the above-named Daniel Magone in the sum of one hundred dollars, to be paid to the said Daniel Magone; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the second day of March, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas the above-named Hyman Sonn and Hermann Sonn have prosecuted a writ of error to the circuit court of the United States for the southern district of New York, issuing out of the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Hyman Sonn and Hermann Sonn shall prosecute said writ error to effect and answer all damages and costs if they shall fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. E. TREMAIN. [L. S.]
MASON W. TYLER. [L. S.]

Sealed and delivered and taken and acknowledged this second day of March, 1891, before me—

JOHN S. DURAND,
[SEAL.] *Notary Public, New York County.*

98 UNITED STATES OF AMERICA, } ss.:
Southern District of New York,

Henry E. Tremain and Mason W. Tyler, each being duly sworn, doth depose and say, each for himself, that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

H. E. TREMAIN.
MASON W. TYLER.

Sworn to this second day of March, A. D. 1891, before me—
JOHN S. DURAND,
Notary Public, New York County.

[Endorsed:] 12773. U. S. circuit court, southern district of New York. Hyman Sonn & ano. *vs.* Daniel Magone. Bond for damages and costs on —. Nordlinger & Rapp, plaintiffs' att'ys, 167 Broadway, New York. The within bond is hereby approved as to form, amount, and sufficiency of the sureties. E. Henry Lacombe. U. S. circuit court. Filed Mar. 3, 1891. John A. Shields, clerk.

99 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, at the city of New York, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-one.

Present: Hon. E. Henry Lacombe, circuit judge.

HYMAN SONN and Ano.
vs.
DANIEL MAGONE, Collector of the Port of New York. } No. 12773.

On reading and filing the annexed consent and on motion of Nordlinger & Rapp, plaintiffs' attorneys—

It is hereby ordered that the plaintiffs deposit in the registry of this court the sum of fifty-four and $\frac{85}{100}$ dollars ($54.85), the amount of defendant's costs, and that such deposit be a supersedeas.

E. HENRY LACOMBE.

100 United States Circuit Court, Southern District of New York.

HYMAN SONN and Ano.
vs.
DANIEL MAGONE, Collector of the Port of New York. } No. 12773.

Whereas judgment in favor of the defendant was duly entered in the above-entitled action on the 3rd day of March, 1891, upon the issues in the action entitled above and for the sum of fifty-four and $\frac{85}{100}$ dollars ($54.85), defendant's taxed costs; and

Whereas plaintiffs have sued out of the Supreme Court of the United States a writ of error to review the said judgment and desire to deposit in the registry of this court the sum of fifty-four and $\frac{85}{100}$ dollars ($54.85), the amount of defendant's costs; and whereas no execution has been issued on said judgment;

It is hereby stipulated and agreed that plaintiffs may deposit in the registry of this court the sum of fifty-four and $\frac{85}{100}$ dollars
101 ($54.85); and

It is further stipulated and agreed that the deposit of said costs be a supersedeas.

Dated New York city, March 25th, 1891.

EDWARD MITCHELL,
U. S. Attorney, Att'y for Def'd't.

(Endorsed:) United States circuit court, southern district of New York. No. 12773. Hyman Sonn and ano. *vs.* Daniel Magone, col-

lector, &c. Order for deposit of defendant's costs pending appeal. Nordlinger & Rapp, plaintiffs' att'ys, Broadway, N. Y. city. U. S. circuit court. Filed Mar. 26, 1891. John A. Shields, clerk.

102 United States Circuit Court, Southern District of New York.

HYMAN SONN and ANO. vs. DANIEL MAGONE, Collector, &c. } 12773.

It is hereby consented that the bill of plaintiffs' exceptions in the action entitled above, filed March 26, 1891, be filed *nunc pro tunc* as of January fifteenth, 1891, the date of the verdict rendered in said action.

Dated New York, March 28, 1891.

TREMAIN & TYLER,
Of Counsel for Plaintiffs.
EDW'D MITCHELL,
U. S. Attorney, Attorney for Def't.

So ordered.

E. HENRY LACOMBE.

New York, March 30, 1891.

(Endorsed:) U. S. circuit court, southern district of New York. 12773. Hyman Sonn & ano. *vs.* Daniel Magone, collector, &c. Consent and order that bill of exceptions be filed as of date of verdict. Nordlinger & Rapp, plaintiffs' att'ys, 167 Broadway, New York. U. S. circuit court. Filed Mar. 30, 1891. John A. Shields, clerk.

103 Supreme Court of the United States.

HYMAN SONN and HERMAN SONN, Plaintiffs in Error, vs. DANIEL MAGONE, Collector of the Port of New York, Defendant in Error. } Assignment of Error.

Afterwards, to wit, on the 31st day of March, 1891, before the justices of the said court, at the Capitol, at the city of Washington, came the said Hyman Sonn and Herman Sonn, the plaintiffs in error, by their attorneys, and say that in the record and proceedings aforesaid there is manifest error in each and every of the several rulings of the court to which exception has been taken, and in the several refusals of the court to admit testimony and to exclude testimony, to which respective refusals to admit and refusals to exclude due objections were made and exceptions severally taken, and in the refusal of the court to submit all of the testimony to the jury or to instruct the jury as prayed for, all of which were duly severally excepted to, and in other respects where exceptions were taken and allowed there was manifest error, as more fully and at large appears by the bill of said exceptions as the same appears of record, and that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid

given, was given for the said defendant in error against the
104 said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs in error against the said defendant in error; and the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid and others in the record and proceedings aforesaid as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that the plaintiffs in error may be restored to those things which they have lost by reason of said judgment.

TREMAIN & TYLER,
Attorneys for Plaintiffs in Error.

(Endorsed:) United States Supreme Court. Hyman Sonn and ano., plaintiffs in error, *vs.* Daniel Magone, collector, &c., defendant in error. Assignment of error. Tremain & Tyler, No. 146 Broadway, New York city, att'ys for pl'ffs in error. U. S. circuit court. Filed Mar. 30, 1891. John A. Shields, clerk.

105 Supreme Court of the United States.

HYMAN SONN and HERMANN SONN, Plaintiffs in Error, *vs.* DANIEL MAGONE, Defendant in Error. } Joinder in Error.

And afterwards, to wit, on the 31st of March, 1891, the said defendant in error, by Edward Mitchell, U. S. attorney, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

EDWARD MITCHELL,
U. S. Attorney, Attorney for Defendant in Error

106 [Endorsed:] 12773. United States Supreme Court. Hyman Sonn *et al.*, plaintiffs in error, *vs.* Daniel Magone, defendant in error. Joinder in error. Edward Mitchell, U. S. attorney, attorney for defendant in error. To Nordlinger & Rapp, attorneys for plaintiffs in error. A copy of the within paper received at our office this thirtieth day of March, 1891. Tremain & Tyler. U. S. circuit court. Filed Mar. 30, 1891. John A. Shields, clerk.

107 UNITED STATES OF AMERICA, *ss:*

To Daniel Magone, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the thirty-first day of March, eighteen hundred and ninety-one, pursuant to a writ of error filed in the clerk's office of the circuit court of the

United States for the southern district of New York, wherein Hyman Sonn and Hermann Sonn are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated New York, March 3rd, 1891.

E. HENRY LACOMBE.

108 [Endorsed:] E. & A. A. 969. N. S. 12773. U. S. Supreme Court. Hyman Sonn and Hermann Sonn, plaintiffs in error, against Daniel Magone, defendant in error. Citation. Nordlinger & Rapp, attorney- for plaintiff- in error. Due service of a copy of the within citation is hereby admitted this 3d day of March, 1891. Edward Mitchell, attorney for defendant in error. U. S. circuit court. Filed Mar. 3, 1891. John A. Shields, clerk.

Endorsed on cover: Case No. 14,554. S. New York C. C. U. S. No. 694. Hyman Sonn and Hermann Sonn, partners as Sonn Brothers, plaintiffs in error, *vs.* Daniel Magone, collector of the port of New York. Filed March 31, 1891.

Office Supreme Court, U. S.
FILED.
OCT 10 1895
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

REPRINT OF COURT FILES

FOR THE USE OF COURT AND COUNSEL IN THE CASE OF

HYMANN SONN AND HERMANN SONN,
PARTNERS AS SONN BROTHERS,
Plaintiffs in Error,

against

DANIEL MAGONE, COLLECTOR OF THE PORT OF NEW YORK.

No. ~~422~~ 16
October Term, 189~~3~~ 5.

Comprising the Record, Briefs Filed, and Opinion of the Court in the Case of

WILLIAM H. ROBERTSON, COLLECTOR OF PORT OF NEW YORK,
Plaintiff in Error,

against

LOUIS A. SALOMON AND CHARLES SALOMON.

No. ~~446~~.
October Term, 1888.

Tried at New York January 21, 1886. Writ of Error Docketed October 13, 1886. Argued January 16, 1889, and decided April 15, 1889. Reported in 130 United States Supreme Court Reports, page 412.

(14,554.)